COMMONWEALTH OF AUSTRALIA

Official Committee Hansard

SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES COMMITTEE

Reference: Wild Rivers (Environmental Management) Bill 2011

WEDNESDAY, 27 APRIL 2011

CANBERRA

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WITNESSES

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

LEGISLATION COMMITTEE

Wednesday, 27 April 2011

Members: Senator Crossin (Chair), Senator Barnett (Deputy Chair) and Senators Furner, Ludlam, Parry and Pratt

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Eggleston, Faulkner, Ferguson, Fierravanti-Wells, Fielding, Fifield, Fisher, Forshaw, Furner, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ludlam, Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Payne, Polley, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Trood, Williams, Wortley and Xenophon

Senators in attendance: Senators Barnett, Boswell, Crossin, Furner, Pratt and Xenophon

Terms of reference for the inquiry:

To inquire into and report on: Wild Rivers (Environmental Management) Bill 2011

Committee met at 1.33 pm

AHMAT, Mr Richard, Chairman, Cape York Land Council

KYLE, Mr Peter, Private capacity

PIPER, Mr Terrence James, Chief Operating Officer, Balkanu Cape York Development Corporation

CHAIR (Senator Crossin)—I declare open this public hearing for the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the Wild Rivers (Environmental Management) Bill 2011. The inquiry was referred by the Senate to the committee on 24 March 2011 for inquiry and report by 10 May. We have received 11 submissions. Public submissions have been authorised for publication and are available on the committee's website. I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to the committee, and such action may be treated by the Senate as contempt. It is also a contempt to give false or misleading evidence to the committee. We prefer all evidence to be given in public but there is a provision for you to provide us with your evidence in camera, in private session. If you want to do that you need to request that and we will try to facilitate that.

I welcome representatives from the Balkanu Cape York Development Corporation and the Cape York Land Council. You have made a joint submission to the committee, which we have numbered 11 for our purposes. Would you like to make an opening statement to address that submission and then we will go to questions.

Mr Ahmat—Madam Chair, members of the committee, thank you for the opportunity to speak at yet another federal parliamentary inquiry into the wild rivers bill. On one level it is pleasing that the federal parliament sees fit to run three separate parliamentary inquiries into a bill about the rights of Indigenous people. It must be the most scrutinised bill in parliamentary history. On the other hand, it is puzzling that in just weeks the government will deliver a harsh budget for tough times. I wonder why then, when money is so tight, that Labor has thrice referred to an inquiry this simple five-page bill which aims only to return to the Indigenous people of Queensland rights over our lands, rights which were gazumped by the state. For more than a year these three inquiries, two by this committee and one in the lower house, have demanded the attention of more than 2,000 MPs, the staff of two committee secretariats and hundreds of senior public servants—from heads of departments to junior officers—in government departments. Thirty staff in federal departments joined forces in an interdepartmental committee to respond to the inquiry of the House of Representatives Standing Committee on Economics. It produced a 116-page submission which, in parts, was eerily similar to submissions and evidence from the Queensland government.

Oral evidence given by some senior bureaucrats to the House of Representatives inquiry was so wrong in fact and biased towards state Labor that we were forced to ask for the record to be corrected. That request was successful. This is the 12th public hearing into this bill. These hearings have been held in Canberra and at various locations in Queensland. These three inquiries have cost millions of taxpayers' dollars in time; sitting fees; travel allowances; and salaries of MPs, advisers and bureaucrats and that is before we even look at the money the state of Queensland and interest groups have spent.

The poor Indigenous people of Cape York have struggled financially to make their voices heard against the weight of this expensive machine and the herculean efforts of the state of Queensland and vested interest groups to discredit us. You have only to look at the six-part, full-colour professionally produced submission of the Wilderness Society to understand who has the money in this equation. You should also look at the ridiculously expensive and misleading full-page advertisements of the Queensland government during these inquiries.

Cape York traditional owners have sat in good faith before all these inquiries in the hope that Australian democracy will serve them and that their voices will be heard. I trust that the obvious conclusion that the inquiries were cynically established to stymie us in our pursuit of justice, to bleed us dry financially, to exhaust us into submission is unfounded and that committee members will vote on the overwhelming evidence before them that our rights have been taken from us.

Madam Chair, a week ago your government's environment minister, Mr Tony Burke, stood on the soil of our beloved Cape York country and pressed the pause button on the World Heritage listing of Cape York until Indigenous people agree to it. We applaud his understanding and appreciation of the reality that Cape York Indigenous people are partners with government in conservation agreements. We are not to be patronised. We understand the rhythms of our land. Minister Burke understands that we have been and should continue to be the true conservators, preservers and custodians of our country. It is a responsibility that we do not take and

never have taken lightly. We congratulate him on declaring that World Heritage listing will not and cannot occur without the consent of Indigenous landowners. We have long said that the World Heritage listing of Cape York will not happen until the injustice of the wild rivers legislation is undone.

The private member's bill, being so avidly scrutinised by this parliament, gives the right of consent to wild river declarations to the Indigenous people of Cape York. Nothing more, nothing less. It is a right that we were denied by state Labor, in cahoots with the Wilderness Society, when they imposed the wild rivers legislation on us. If logic is to flow from Minister Burke's commitment that there should not be World Heritage listing of Cape York without Indigenous consent, then surely Labor supports the right of consent to wild rivers declarations. You cannot have a right of consent in one important closely linked conservation arena but not in another. It is illogical.

The Wilderness Society will follow me in giving evidence today and they will say that the state consulted with Indigenous communities before imposing the legislation. Interestingly, they always speak on behalf of the government. They are partners in the wild rivers injustice. They should hang their heads in shame. They know and the state knows that they walked away from 20 years of achieving conservation outcomes by agreement. Two decades of working with government, conservationists, miners, pastoralists and other stakeholders was shredded by these two parties when they decided to unilaterally impose a wild rivers regime. Not one Indigenous community or representative body was asked to consent to the declarations, which were rolled out just days after Labor won a tight March 2009 state election on the back of Green preferences.

Freedom of information documents reveal that the state's then Minister for Natural Resources, Mines and Energy, Stephen Robertson, met with the Wilderness Society on 30 March, four days after being sworn in and 48 hours before documents were signed by the minister's office to declare three wild river basins covering large slabs of Cape York. Of all the decisions in the early days of a returned government, the wild rivers legislation was deemed so politically important it was made a priority order. Indigenous representatives were not an entry in Minister Robertson's diary that day. We had been banished. This was, after all, an exercise in political payback for the electoral win. A new line of attack against the private member's bill is the definition of 'owner'. The definition of 'owner' in the amended bill is confusing and could lead to all manner of unintended consequences. This line is being uniformly run by the usual suspects—the Labor members of the House of Representatives inquiry, the Wilderness Society, the Queensland government and members of the federal bureaucracy. Yet all the spruikers of this erroneous line know from experience that agreements are constantly being reached with the very same groups of people that constitute the definition of 'owner' in the bill. It has not been a problem before so why are they using this line now?

The Vegetation Management Act, for instance, uses exactly the same definition of 'owner' as contained in this bill. It has never been a problem for the state. My colleague Mr Terry Piper will address this issue further in his address. We are encouraged by the fact that the Greens are looking at legislative ways to enhance Indigenous rights through the Native Title Act. The right of consent is supported by the Greens. We do not see any reason why the private member's bill cannot sit side by side with other attempts to enhance Indigenous rights.

Cape York representative bodies have not yet been approached by the Greens to discuss either their proposed legislative reforms or this private member's bill. We have attempted and will continue to attempt to meet with Rachel Siewert and others of goodwill among the Greens who want to improve the lives and rights of Indigenous peoples. In the same spirit, we will work with any federal or state politician or political party committed to real Indigenous development. Our doors are always open to politicians of goodwill and good heart.

Finally, I want to repeat that I and other Indigenous representatives have put to federal and state Labor a solution to the injustice of the wild rivers legislation. We have proposed a conservation and land management model that meets and possibly exceeds social, economic and environmental standards and challenges set by governments. Our model gives the Indigenous people of Cape York a say in their lives and their future—a real partnership with government. The only test it does not meet is that the power groups, such as the Wilderness Society, be rightfully diluted. After all, they do not live on Cape York, they do not raise a family on Cape York and they do not have any cultural or spiritual attachment to Cape York. We wonder whether that is the reason our model has been steadfastly ignored by the Labor machine, which relies for its political survival on the electoral clout of the Green vote. Thank you.

CHAIR—Do you have something to say, Mr Piper?

Mr Piper—The issues that Cape York has in relation to the Wild Rivers Act have been pretty well documented in the various submissions to this inquiry, to the previous inquiry by the economics committee and in submissions to the House of Representatives inquiry. I suggest that members look at those submissions. In those submissions we have also raised issues about the honesty and integrity of the process in relation to the declaration of wild rivers on Cape York. There are a few things that I would like to raise with the committee at the moment, to bring the committee up to date from the last inquiry. At the last inquiry the committee will remember that the Queensland government submitted a list of development approvals—over 100—that it claimed to have approved. We obtained a copy of those development approvals under FOI and scrutinised them. Noel Pearson wrote to Premier on 27 October 2010, raising a number of issues in relation to those development approvals. The Premier has still not responded to that letter. I will table a copy of that letter to this committee.

CHAIR—What position does Mr Pearson hold?

Mr Piper—He is with Cape York Partnerships.

CHAIR—In relation to the Balkanu Cape York Development Corporation and the Cape York Land Council, can you just clarify for *Hansard* what position he holds and how that fits in with the two organisations here today?

Mr Piper—We have five sister organisations that operate on Cape York that implement the welfare reform policy on Cape York. We have Balkanu Cape York Development Corporation, the Cape York Land Council, Cape York Partnerships, the Apunipima Cape York Health Council and the Cape York institute. There are five organisations there that work together on implementing welfare reform, which is a very important program on Cape York.

CHAIR—You are referring to a letter that Mr Pearson wrote. He wrote that on behalf of whom?

Mr Piper—Cape York Partnerships.

CHAIR—Not Balkanu or the Cape York Land Council?

Mr Piper—No.

CHAIR—Do we have a submission from Cape York Partnerships for this inquiry? No, we do not.

Mr Piper—I would like to go to some examples of concerns that we have about evidence given by the Queensland government to the last inquiry.

CHAIR—Do you mean the last Senate inquiry?

Mr Piper—The Senate inquiry. At the last Senate inquiry, after many months of seeking a copy of the instrument by which the minister made the declaration of the wild rivers on Cape York, we wrote to the Premier, the minister and the governor requesting a copy of the instrument by which the minister made the declarations. We also sought that through FOI. It should be on the public record. Ultimately, this committee requested a copy of the instrument and a briefing note was provided to the committee, which the minister claims to have signed on 1 April, that this is the instrument by which the wild river declarations were made under section 15 of the Wild Rivers Act.

Senator BARNETT—Is that a public document?

Mr Piper—It is a public document, yes.

Senator BARNETT—Was that part of the Queensland government's submission?

Mr Piper—It was part of Minister Robertson's submission to the last Senate inquiry. The declarations were not actually an attachment to this document. We do not believe that this document could constitute an instrument by which the minister can make a declaration.

Since that time, in the parliamentary inquiry, while in the Senate inquiry the minister said that he signed this document on 1 April, in response to questions on notice to the parliamentary inquiry the Queensland government has said that the minister's office signed this document on 1 April. So to this inquiry Minister Robertson said he signed the document; to the parliamentary inquiry the Queensland government has said that the minister's office signed that document. We have also obtained under freedom of information a copy of the tracking document that runs with this briefing note. There is no record of this briefing note having gone to the minister's office on 1 April or returned from the minister's office signed on either 1 or 2 April. The first reference to a signed hard copy of this document is on 6 April.

Senator BARNETT—What was the document on 6 April?

Mr Piper—That is the ministerial executive correspondence system document, which is part of our submission. It is attached to our submission. The Queensland government, in saying that the minister's office signed this document, has raised doubt about who signed it and when. The minister and senior government officers put forward statements that, upon being appointed as minister on 26 March 2009, the minister was in receipt of the public submissions and actively considered the public submissions.

CHAIR—You are talking about the Queensland minister, aren't you?

Mr Piper—The Queensland minister, Stephen Robertson. From what we now know from the response to questions on notice from the Queensland government, the public submissions were attached to this briefing note. We do not believe the minister received the public submissions before this briefing note got to the minister. We know that this briefing note was not finalised by the department until 4.57 pm on 1 April. We know that if the minister received the public submissions—

Senator BARNETT—How do you know that?

Mr Piper—From the ministerial and executive correspondence system document that is attached to our submission.

Senator BARNETT—It says 4.57 pm?

Mr Piper—It says 4.57 pm on 1 April—

CHAIR—You are looking at a document, Senator Barnett, that none of us has got a copy of.

Mr Piper—It is attached to our submission, so each of you should have it.

CHAIR—From the last inquiry. We do not have your submission from the last inquiry with us.

Mr Piper—No, it is our submission to this inquiry.

Senator BARNETT—But there are two documents. You have got the document which is an attachment to your submission but you have also got attachment E, which is—

Mr Piper—That was an attachment to the Queensland government's submission.

Senator BARNETT—Of the last inquiry—

Mr Piper—That is right.

Senator BARNETT—which is the briefing note which you are saying was lodged on 1 April at 4.57 pm.

Mr Piper—Yes. That is when Debbie Best, the acting director-general of the department received the briefing note.

CHAIR—I am very confused, Mr Piper. The attachment to your submission is actually a file copy note of received correspondence and allocated details.

Mr Piper—Can you show that?

CHAIR—Yes, it looks something like this.

Mr Piper—That is the document, yes.

CHAIR—The document you are holding up then—

Mr Piper—is a different document—

CHAIR—Yes, which we do not have.

Mr Piper—Okay. You do have a copy of this from the previous inquiry. I will table this.

CHAIR—Yes, but the members on this committee are different.

Mr Piper—What I was saying is that the document I was referring to, that Senator Barnett was asking me about, is—

Senator BARNETT—Mr Piper, to make it easy, why don't you just table that and we will get a copy of it and go from there.

Mr Piper—So we believe that the minister did not actually consider the public submissions, and if the minister did consider the public submissions it was absolutely a last-minute and token effort after the decision had been made to refer these matters to governor and council for approval.

With people on Cape York, there was a consultation process that occurred and people went to a lot of trouble to put in submissions on the proposed wild river declarations on Cape York. It is a farce if people go to the trouble of putting in submissions and participating in a consultation process if at the end of the day the minister does not actually consider the submissions.

I will table this response to the questions on notice from the House of Representatives inquiry. The executive council minute to the governor in council was regarded as a late minute because the minute was submitted two days before the governor in council met. Under the Queensland government's executive council handbook a late minute is to be lodged only where genuine unforeseen urgent matters of state arise. We are absolutely baffled as to why wild river declarations on Cape York, which take away the rights of Indigenous people on Cape York, constitute a genuine unforeseen urgent matter of state for the Queensland government. It has got us baffled why the governor would have approved the wild river declarations and regarded these as matters of state importance.

They are some of the things that have come up since the last inquiry. I would like to now go to our submission to the inquiry and would like to correct some of the matters that have been raised by various people who put in submissions. One is that the Wild Rivers (Environmental Management) Bill does not overturn the Wild Rivers Act. All it does is lift the regulatory provisions of the Wild Rivers Act where it applies to Aboriginal land unless there is an agreement with the Aboriginal people involved. So it does not overturn the Wild Rivers Act. In fact, it does not actually overturn the existing wild river declarations. What it does is remove the regulatory arrangements under those declarations as they apply to Aboriginal lands if agreement has not been reached with Aboriginal landholders. It is not a veto right to wild river declarations at all. It does not only apply to Cape York; it does apply to Aboriginal lands outside of Cape York.

The bill does not remove environmental regulation. If a wild river declaration does not apply, all the rest of the environmental regulation continues to apply. There is a large amount of environmental regulation that continues to apply. In fact, any attempts at dams or mines in the areas near all the rivers down the east coast of Cape York that flow into the Great Barrier Reef Marine Park would make the Commonwealth Environment Protection and Biodiversity Conservation Act kick in. If wild river declarations are not agreed to, there is already a large range of regulatory provisions that actually apply.

The bill will not threaten the employment of existing wild river rangers. It has been implied by various parties that, if the wild river bill comes into place, then wild river rangers will lose their jobs. That is not correct, because the wild river declarations will continue to apply. The main effect of the bill is that it does not regulate Aboriginal lands without the agreement of traditional owners.

An issue raised by a number of submitters is that the bill now incorporates Aboriginal lands. Previously when the Senate considered the bill it was a bill that addressed native title and it did not actually include in the landholder definition the Aboriginal landholdings on Cape York. There are about seven types of Aboriginal landholdings.

It does not increase the level of complexity. The Queensland government and the Cape York Land Council are dealing all the time with areas where Aboriginal land and native title coexist. Various agreements have been reached, whether they are mining agreements or other agreements, over Aboriginal land where native title coexists. The chair would be familiar with areas in the Northern Territory which are Aboriginal land where native title coexists.

We believe that the Aboriginal lands need to be very much part of this because it is on those Aboriginal lands that development rights and economic development opportunities are available. A lot of the time these Aboriginal lands have come about as a result of settlement of native title issues with the state government. They come about through native title agreements with the state government. They are the vehicle through which people can pursue their economic development opportunities where they are native title holders.

Native title holders themselves cannot go into a local government office and apply for a development approval. It is the people with the underlying tenure, the Aboriginal landholders, with the agreement of the native title holders, who can do that. The development rights of native title holders themselves, particularly where native title is not exclusive, are unclear. We strongly believe that we need to include the Aboriginal lands in this because that is where the economic development issues in relation to the Wild Rivers Act really impact. These tenures have come about through native title agreements in the main.

They are not unusual. As Ritchie said, the Vegetation Management Act has a definition of landholder which is very similar to the one that is in this wild rivers bill. The carbon farming, the Commonwealth carbon credits

legislation, has a definition of land rights land which is very similar. The Commonwealth are dealing with these issues at the moment, so we do not see that the way that the wild rivers bill is framed adds any greater complexity. Ultimately, as the chair would be aware, these things need to go together. If you have native title over land, there is no sense having your native title rights protected if that matter is prohibited to the underlying tenure holders and you cannot progress an approval because the underlying Aboriginal tenure, the statutory tenure, cannot progress it. These things need to go consistently and together.

Some of the other changes in the bill I think are quite straightforward. The definition of 'owner' is to accommodate those various types of tenure. As I said, you have native title and one type of tenure, but you do not have the six tenures all overlapping in the one spot, which seems to be indicated by some people. To clarify, the bill also provides for Indigenous land use agreements for making agreements with native title holders.

To finish, we on Cape York have been doing agreements for a long time—Indigenous land use agreements, agreements with statutory tenure holders. We do them about tenure. They need to be done by the Commonwealth about housing, mining projects and conservation projects. A nature refuge agreement requires the agreement of not only the landowner but the native title holder and the mortgagee and the various interests in the land. This is no more complex than those conservation arrangements that are in place at the moment. I will finish at that.

CHAIR—Thank you for that. Mr Kyle, do you want to say a few words?

Mr Kyle—What has to be said was said well by Ritchie and Terry. Most of the documentation that you went through over the wild rivers legislation I was involved with. My name is always mentioned somewhere in there. I think they have covered everything quite well. I think you can get a better picture now after some of the things that Terry has put forward. Thank you.

CHAIR—Thank you. We will go to questions.

Senator BARNETT—Thanks to Mr Ahmat, Mr Piper and Mr Kyle for being here and for making the effort to be in Canberra. We remember your previous submissions to us in Cairns and other places. Thanks again for your submission. I want to go, firstly, to the issue of the broader scope of the bill, covering Aboriginal land. Some allegations in some submissions say that it makes it more complex, technical and confusing. I would like your response to those allegations. Just to put it on the record, you supported the previous bill and now you are supporting this bill, as I understand, albeit an expanded version of it.

Mr Piper—Yes. We supported the previous bill and we support this bill. We found it necessary to include the Aboriginal lands in this, because the purpose of the bill is to protect economic development opportunities for Indigenous people and I need to point out that Cape York traditional owners, like Indigenous people everywhere, are just as concerned about the environment as others are—particularly more so—and they have kept that environment on Cape York pristine in most cases. So we support this bill because it is through the Aboriginal lands and the Indigenous tenures on Cape York that the economic development opportunities really arise. The Wild Rivers Act itself has the major impact.

Senator BARNETT—That is useful. I now want to move to this issue of breach of process. When this came up, as you might remember, I asked quite a few questions of you and also of the Queensland government in terms of the approval process by the Queensland government. I want to go to that because you have referred, in your submission, to some concerns that have arisen since the previous Senate committee report came down. You have referred to FOI and answers to questions on notice from the Queensland government. The Queensland government responded on 6 May to our committee and in response to my question whereby I asked them to please provide a copy of the instrument signed by the minister by which the minister declared the areas to be wild rivers areas in accordance with sections 7 and 15 of the Wild Rivers Act. Have you ever seen that instrument?

Mr Piper—The Queensland government claims that document, the briefing note, is the instrument by which the wild rivers declarations were made under section 15 of the act. We do not believe that is an instrument by which the declarations could be made. All that document constitutes is that the minister, in signing that document, approved of a recommendation—and the recommendation was the minister approve the wild rivers declarations.

Senator BARNETT—I am fully aware of that. I am asking you your view. Yes, that is a briefing note—and everyone can see it is a briefing note because that is what it says, that it is a briefing note—but it is clearly not an instrument pursuant to sections 7 and 15 of the Wild Rivers Act. Is that your view?

Mr Piper—That is our view.

Senator BARNETT—The government of Queensland has come back to this question on notice. They say:

The reference in the Attachment E briefing note is to highlight for the Minister that changes from the declaration proposal were made as a result of the consultation process, but this was subject to his decision to approve the changes. On 1 April 2009, the Minister signed the final decision to seek approval by Governor-in-Council to declare the Archer, Stewart and Lockhart Basins as wild river areas.

So what would you say to that answer? That is the extent of the Queensland government answer on that question.

Mr Piper—The act requires that the minister actually make the declaration, not Governor-in-Council. The process under the Wild Rivers Act is the minister declares the wild rivers and, having made the declaration, then the minister puts that declaration to Governor-in-Council and Governor-in-Council approves the declaration.

Senator BARNETT—My question to you is: have they breached their own act?

Mr Piper—Our view is that they have not followed their own legislation, that the minister has not actually declared the wild rivers at all.

Senator BARNETT—So they have breached their own act in terms of the process?

Mr Piper—That is correct.

Senator BARNETT—We have here a briefing note which you have kindly alerted us to but it has been on the public record for some time. You say it was not received before 4.57 on 1 April. Is it your view that the minister has written to the Premier before that time or after that time about this issue?

Mr Piper—The minister has written to the Premier on the day before. So on the day before receiving this briefing note the minister has written to the Premier to request the Premier's approval to go to Governor-in-Council with the wild rivers declarations. The minister, in writing to the Premier, advised the Premier that he had considered all of the public submissions in accordance with section 13 of the act.

Senator BARNETT—So it is the cart before the horse in a way?

Mr Piper—That is right. The minister has written to the Premier to tell the Premier that he has considered the public submissions on the day before he has actually received the briefing note with the public submissions attached.

Senator BARNETT—These are questions that we can ask the Queensland government, but what possible answer have they got to these questions if there is a briefing note and they are not disclosing the declaration? We need to get a copy of that declaration, don't we? You haven't seen it? Nobody has seen it?

Mr Piper—If I recall rightly, the previous Senate committee actually requested a copy of the declaration.

Senator BARNETT—I requested it. On behalf of the committee we put that question to the Queensland government.

Senator BOSWELL—How can the Queensland government say this attachment E is the instrument?

Mr Piper—That is what the Queensland government assert, that attachment E is actually the declaration. I suppose, to go back to your question about the process, it is clear from the FOI material which was submitted to the previous Senate inquiry that late in the afternoon of 30 March the Queensland government was uncertain about whether the previous minister had made the decision or Minister Robertson needed to make the decision. So late on 30 March, three days before Governor-in-Council approved it, they were unclear about whether Minister Robertson actually had to make the decision. That lack of clarity seems to have continued on until at least 1 April. On 1 April the briefing note was prepared and then sent to the minister but prior to that the government had not determined whether Minister Robertson needed to actually make a decision or not. It is something where it is unlikely that the minister considered the public submissions prior to that with a mind that he was the one who had to make the declarations, because it was uncertain.

CHAIR—Sorry, Senator Barnett, but before we go any further we have a couple of issues before us that I need to have resolved. Mr Piper, you have now tabled for us a letter with Cape York Partnerships as the letterhead. We do not have a submission from Cape York Partnerships so either I need an explanation from you or I need to get my committee secretary to see if Cape York Partnerships have any objections to their correspondence being tabled. It is signed by Noel Pearson. What position does he hold in relation to Cape York Partnerships?

Mr Piper—Okay, we will get back to you on that.

CHAIR—No, as you have asked us to accept this document today, we, as a committee, need to know in what capacity we are accepting this document. This document is signed by Noel Pearson but his signature does not tell us in what capacity that is—as a member, as a chair, as a public officer or as a person in relation to Cape York Partnerships. We have not got a submission from Cape York Partnerships so we need to know if the partnerships organisation agrees to this.

Mr Piper—This document has previously been tabled at the House of Representatives inquiry as well so it is something that has been tabled previously.

CHAIR—That might be so but this is a Senate inquiry and we need to satisfy ourselves for our purposes that documents that are tabled are authorised by Cape York Partnerships and by the person signing them. We also need to know in what capacity he has signed this document.

Mr Ahmat—His position at Cape York Partnerships, Madam Chair, if I may interrupt, is chairman of the board of Cape York Partnerships.

Senator BARNETT—So he is signing on behalf of Cape York Partnerships. Is that your assumption?

Mr Ahmat—Yes.

Senator BARNETT—So as chairman of the board.

CHAIR—Right, but it is not clear in this documentation so we have clarified that. Now is either Balkanu or the Cape York Land Council a member of Cape York Partnerships?

Mr Piper—We are owned by the same organisation so we are sister organisations.

CHAIR—Balkanu is?

Mr Piper—We are each part of the Cape York Corporation.

CHAIR—The Cape York Corporation, which is Cape York Partnerships?

Mr Piper—Cape York Partnerships is a sister organisation to our organisation.

Mr Ahmat—The governance structure, Madam Chair, is: the Cape York charitable trust; under the charitable trust it is the Cape York Corporation; under the Cape York Corporation it is Balkanu, land council, partnerships, institute, Apunipima.

CHAIR—What you have tabled for us today is correspondence from an organisation that has not put in a submission to us in its own right.

Senator BARNETT—But you are saying it is a public document—it has been tabled in another forum?

Mr Ahmat—It has been tabled previously, yes.

CHAIR—Sure, but that is the House of Representatives. This is a Senate committee. We will need to ascertain, I think, for our own purposes, that Cape York Partnerships is happy for this to be submitted to this inquiry before we can make it public.

Mr Piper—Yes, by all means.

Senator BARNETT—I will continue where I left off, and that is: on the last page of your submission you say that, in response to freedom of information requests—and well done on pursuing this with some vigour, because you have enlightened the committee with some of the responses you have got—the government has advised that the minister's office, rather than the minister himself, signed this briefing note of 1 April 2009. Do you know who signed that on behalf of the minister's office?

Mr Piper—We do not. And, just to clarify: the response saying that the minister's office signed the document was a response to questions on notice in the House of Representatives inquiry. So we do not know, if the minister's office signed it, who it was from the minister's office who actually signed it.

Senator BARNETT—But have you tried to find out? That is something we can ask the government; that is really what you are suggesting to us.

Mr Piper—It is something you could ask the government.

Senator BARNETT—It is of merit. It is the minister's office; it is not the minister. Is that another reason why it is clearly not a declaration but a briefing note? Is that what you are saying to us? Does that support that view?

Mr Piper—Well, it is unusual that the minister's office would sign a document if it is to be a declaration; the minister has to make the declaration, not the minister's office.

Senator BARNETT—We will ask some more questions of the Queensland government, I think, but thanks for now; I appreciate that.

Senator FURNER—I am a little bit confused, also, about representation. Who do you actually represent in the cape—what communities?

Mr Piper—We will start with Richie and the land council structure.

Mr Ahmat—It is 17 communities we represent in the cape.

Senator FURNER—Of those 17, do you represent Taepathigi and Kaantju?

Mr Ahmat—Taepathigi is not a community; Taepathigi is a traditional owner group.

Senator FURNER—So you do not represent them?

Mr Ahmat—We represent all traditional owner groups at the present moment.

Senator FURNER—So you do represent them? Do you represent Kaantju?

Mr Ahmat—Yes.

Senator FURNER—And in what manner do you represent them? Do you give them financial support?

Mr Ahmat—On native title matters.

Senator FURNER—What consultation have you had with them in respect of your submission here today?

Mr Piper—Balkanu also has a board which has representatives from Cape York. We are not saying that we represent everybody from Cape York.

Senator FURNER—Well, I just had it posed to me that you do—you represent 17 communities.

Mr Piper—No, I am just talking about Balkanu.

Mr Ahmat—Under the land council, Senator—

Mr Piper—So I am just talking about Balkanu. There are groups—and, as this committee is well aware, a small group of northern Kaantju do not agree with the approach that we take. Our approach is that we are looking at protecting the best interests of traditional owners on Cape York. Our approach in this is that we want to see wild river declarations by agreement and if communities give the opportunity for groups like the northern Kaantju that you are talking about to agree to these wild river declarations I am sure that they would agree to it. This is a matter of engaging properly with Indigenous groups to negotiate the outcomes. I will give you an example, and one that you should be quite familiar with.

Traditional owners on Cape York questioned why high-preservation areas need to be one kilometre wide. On the Aboriginal lands, except for Breakfast Creek, the high-preservation areas were all one kilometre wide. For Cape Alumina, a mining company, the high-preservation area is only 500 metres. Aboriginal people were told that the high-preservation area would not be reduced because of the risk of mining, but when it comes to a mining company it is reduced to 500 metres. For the whole of the Coopers Creek area—that whole wild river proposal—it is a 500-metre wide high-preservation area. So when it comes to Aboriginal landholders the government says, 'No, it has to be a kilometre wide except for one exception,' but when it comes to large numbers of whitefella landholders it is 500 metres, not a kilometre. These are the kinds of things why it is very important to engage properly with the traditional owners of the land to reach agreement.

There are people who support wild river declarations out there. We respect that, but we respect the right for people to do it by agreement and come up with solutions that suit them.

Senator FURNER—You made the comment in your submissions and opening statements about the view that this particular bill appears to not result in any loss of employment. Why is there a need to have that provision in the bill then—it is at 4(3)(b)—if that is the case? It seems an unusual instrument to have in a bill, referring to the loss of employment and in this particular case that the Commonwealth government should then pick up the tab.

Mr Piper—It is a provision that we were not responsible for. But it is a provision, as far as I know, that gives comfort to people who are concerned about their positions as wild river rangers. We take the view that the wild rivers bill will not overturn the declarations themselves and therefore they are still wild rivers and the need for wild river rangers is still there. We do not believe that ultimately wild river rangers should even be

connected to the declaration of wild rivers. The land out there needs managing regardless of whether it is a wild river. But that is a provision that gives comfort to people if they are concerned about this bill.

Senator FURNER—So what is your understanding of that provision? Is it a case that if this bill is successful and as a result there is a change in the protection of a particular wild river—one of the l0 declared—and there is a loss of employment that the federal government picks up the tab? Is that your understanding of it?

Mr Piper—That is my understanding. But can I just correct you there: many more than 10 wild rivers have been declared. The state claimed that three wild rivers were declared in April 2009 when in fact there were 13 wild rivers declared. So the figures you are quoting there are well under how many wild rivers have been declared.

Senator FURNER—So you do support the view that that is a provision for protection in the case of lost employment. It does not talk about rangers; it says:

should the enactment of this Act result in the loss of employment by persons employed or engaged to assist in the management of a wild river area then the Commonwealth Government should provide employment to those persons in accordance with details specified in the regulations.

That is despite the fact there are no regulations to the bill—I do not know how we are going to accommodate that for a start. In my interpretation, 'persons' could mean people who are associated with the management, the research or any involvement whatsoever in any of those 13 declared wild rivers. Would you not agree?

Mr Piper—It is a broad definition. It is intended for wild river rangers, but it could be broader. But what I am saying is that it is highly unlikely for the bill to result in loss of employment unless the Queensland government chose, on the strength of the bill, to remove people's employment.

Senator FURNER—It would not be the Queensland government. If this bill is successful, it could be the very catalyst for a change of employment in any one of those wild rivers as a result of this bill coming into effect. You mentioned earlier about the Cape Alumina example of protection. If that area of the Wenlock River was mined and resulted in a loss of the need for not only rangers but also other people who manage the river, it could amount to hundreds of jobs in that particular area as a result of a change in the way that river is protected.

Mr Piper—What we are saying here, though, is that you need to look at the specific examples that are there. Cape Alumina is not mining at the moment, it is not employing people—this is referring to the existing wild river declarations and I think it is not a real circumstance that you are talking about.

Senator FURNER—Both Mr Ahmat and you referred to rights being taken away from people on the cape. What do you mean by that? What sorts of rights are you concentrating on?

Mr Ahmat—The right we were referring to is the right of consent. I remember the inquiry in Cairns. I was before the committee in Cairns. People talked about an amount of money that was given to one of the regional organisations for consulting about the wild rivers bill. Senator, the organisation that was funded to do this was to do the logistical work. The amount of money from the state government will get you nowhere. This is Cape York we are talking about. It is a vast area of land that is 95 per cent Indigenous owned under native title. Some of the determinations are there. When they say that this organisation was paid to consult, that is not right. The organisation was paid to do the logistical work. The state government ran all of the consultation meetings around the cape.

There are traditional owners on Cape York who support the wild rivers legislation—and that is their right—but 85 per cent of Aboriginal people on Cape York do not support it.

Senator FURNER—How have you reached that figure? How have you reached 85 per cent?

Mr Ahmat—Because we have talked to people. We have not consulted or had major meetings but we have talked to people. I have travelled to the communities and people have come up to me and said, 'How come this wild rivers? How come they are locking up our country?' Aboriginal people hand down land and water. You can never separate them. You are handed that responsibility from the age you learn to hunt and gather. People seem to forget that. It is your land. We will never damage it. It is a part of our heart. People have to understand that.

That is why I say the senior people in Cape York I talk to say they want to go back to the table. They do not want to lock up their country. Who is to know in 40 years how our children will want to develop? Who is to

say that there will not be another development company that comes in and says, 'We want to help you to establish a fishing lodge or to establish something else.' This bill is all about locking Cape York up.

Senator FURNER—I do not necessarily agree with that. I do not see any signs of any locking up of any land in the cape in respect of what you are arguing.

Mr Kyle—I am one of the traditional owners from Cape York. I represent the Umpilla clan group. You talked to Ritchie about consultation that was done for this wild river legislation. I am one of the guys who can look you in the eye and if you were on my country I would make you sit down at the side of a fireplace and say, 'I'll make a traditional owner out of you. Listen to me; listen to what I have to tell you.' That is what I would say to you.

How the meetings were held, Ritchie does not have to tell you; I will tell you because they did this to me. They snuck around to my place at about half past five in the afternoon to talk to me about wild rivers. I said, 'This was not the place to be talking about wild rivers. We have meeting rooms that we go to when we discuss these things.' There were all these guys from the government agencies. I walked away and I rubbed grease all over my hands. They wanted to introduce themselves. I stretched my hand out and said, 'How would you like to shake it?' That is what I think of you guys sneaking around my place at that time of the damn night to talk about wild rivers.

I said, 'You can talk to Peter Kyle. What do you want Peter Kyle to do? Go and convince all his little Murris to say yes to your wild rivers?' I have to go back and tell people what I am told. That is where I fit in as an elder. I have to inform them about what is being said about our part of the country. When you talk about country—I have said this once and I will say it 1,000 times—instead of making decisions down here in Canberra, come up and see how much country Peter Kyle and his clan group have got left. Nothing!

Before we got our land handed back we had to sign an ILUA—and you are fully aware of what ILUAs are. We had to give back 58 per cent of our country. That leaves us about three kilometres of country. Once you get the big protection plan that is going to come into play—wild rivers running through most of your country—

Senator FURNER—So you are suggesting that you cannot hunt and fish on some of these rivers that have been declared?

Mr Kyle—You can't even dig a dunny pit!

Mr Ahmat—I do not think Mr Kyle is saying you can't hunt and you can't fish—**Mr Kyle**—I did not even mention that.

Senator FURNER—I am just asking you as a question.

Mr Ahmat—It is not about Aboriginal people standing up with a spear with one leg crooked on a knee. We have young Indigenous families who want to improve their lot, who want to establish something on their country. Tourism is a big industry, a major industry. But, if you live in Lockhart River, who is going to help you to write a submission for a development proposal on the banks of the Claudie River or the Lockhart River when you need an environmental scientist to do some studies for you and a lawyer to help you with the application and you do not have money? You tell me.

Senator FURNER—Someone has been helping someone, because over 100 applications have been approved since wild rivers came into place.

Mr Ahmat—But the applications are from government agencies!

Mr Piper—If you look at those applications they are mainly from mining companies. That figure of 100 is incorrect. A lot of those applications are duplications. A lot of them are environmental authorities that relate to exploration permits for mining, so the environmental authority and the exploration permit are regarded as two development approvals for the one development. Those 100 development applications included nine development approvals for one fence; one fence through the KULLA Land Trust are required nine development approvals, and it was only approved because the government claimed that it was for weed control. So the development figures you are stating are inaccurate, and that has been taken up with the Premier.

Senator FURNER—There will be some questions of the Queensland government then. Thanks very much.

CHAIR—Thank you for making the trip to Canberra and for your time today. We cannot actually find the Cape York Partnerships document tabled in the House of Reps inquiry.

Mr Piper—Is not on the website; it was tabled at the inquiry itself.

CHAIR—We will need to check that out before we can accept it as a document for our purposes. Thank you.

Senator XENOPHON—Chair, I might have to put some questions on notice to the last witnesses since I did not get the opportunity to ask them anything.

CHAIR—I did not realise you were on the line.

Senator XENOPHON—Sorry. The committee knew, or someone knew. Broadcasting knew, because I have been listening for the whole hour.

CHAIR—My apologies.

Senator XENOPHON—No problem.

[2.34 pm]

BEST, Ms Debbie, Deputy Director-General, Queensland Department of Environment and Resource Management

BOYLE, Mr Terrence, Team Leader, Wild Rivers, Queensland Department of Environment and Resource Management

LUTTRELL, Mr Andrew, Director, Native Title Policy and Legal Services, Queensland Department of Environment and Resource Management

SHIRREFFS, Ms Leslie, General Manager, Queensland Department of Environment and Resource Management

Evidence was taken via teleconference—

CHAIR—Welcome. We have a submission from you, which we have numbered 6. I now invite you to make a short opening statement and then we will go to questions.

Ms Best—I thank you for taking the opportunity to hear the views of the Queensland government on the **Error! No document variable supplied.**. I would like to once again address the misconceptions about Queensland's wild rivers framework and its perceived impact on the interests of Aboriginal people in the management, development and use of native title land. This is the third inquiry into this matter. The initial Senate inquiry in June last year, after considering 37 submissions and two public hearings, recommended that the Senate not pass the bill, saying it was not persuaded that the Queensland act substantially interfered with the current or future development aspirations of Indigenous landholders in wild rivers areas and that, even if it did, the bill before the Senate did not provide the comprehensive and considered solution needed to economically and socially empower Indigenous communities in wild rivers areas—and the bill has not changed in this regard. The second inquiry was the House of Representatives Standing Committee on Economics inquiry into Indigenous economic development in Queensland and the review of the **Error! No document variable supplied.**2010. It held a significant program of hearings—in Canberra, Cairns, Weipa, Bamaga, Brisbane and even on country in the Kaanju homeland—and is currently considering 39 submissions. This inquiry is yet to report its findings to the Australian Parliament.

Queensland does not support this bill and has made its concerns known to each of these inquiries. Of paramount concern is the infringement of a state's right to make laws that the bill contemplates, and nothing in its minor redrafting since the last Senate inquiry has changed that concern. As a sovereign state, the Parliament of Queensland has the power to make laws as provided for in both the Constitution Act 1867 and the Australia Act 1986. This power, combined with the state's constitutional responsibility for environmental protection, has been successfully used to protect and regulate the use of the environment through a range of Queensland legislation. There is no express power in the Commonwealth Constitution for the Commonwealth government to legislate in respect of environmental protection in the states and therefore be primarily responsible for enacting legislation for environmental protection through the regulation of activity and development—and that is what the Wild Rivers Act does; it regulates and sets conditions on developments that would adversely impact on the values of the river.

The effect of this bill would be to undermine and remove the Queensland Parliament's power to protect and regulate the environment in areas declared as wild rivers areas unless the consent of the Aboriginal owners of the land is obtained. This is an interference with the lawful legislative powers of the state by the Commonwealth setting out to override the legislation of a democratically elected parliament—significantly, legislation taken as a transparent and open commitment to three state elections. If passed, this would set a dangerous precedent to Commonwealth intrusion into lawful state environmental protection legislation, not just for Queensland but for any state.

These are not the only concerns about this bill. The bill appears to provide the power of veto for owners of Aboriginal land over the effect of a declaration under the Wild Rivers Act. This provides a power beyond any held by other people in declared wild river areas and is also not a power available under any other act of parliament, including for the regulation of mining, land use planning, health or education. The drafting of the bill can only lead Queensland to conclude that its intent is to ensure that its wild rivers framework fails.

By way of explanation, the bill requires that the owner of the Aboriginal land must consent in writing for wild river declarations to remain or to be effected, providing for eight different definitions of 'owner'. Because

of the historical displacement of Indigenous people, there will likely be disputes over who the owners are for different areas. The bill does not provide for a mediation or arbitration process, nor appropriate review mechanisms where reasonable attempts to obtain agreement do not result in the required 100 per cent consensus of all owners of the Aboriginal land. Accordingly, the resistance of any one owner would have the power of blocking the wishes of the majority, effectively rendering consent unworkable and therefore rendering the wild rivers legislation, even if supported by communities, unworkable, undermining the people's communal interest in the land which the bill seeks to reflect.

The bill's definition of what is Aboriginal land and who is the owner of that land is extensive and would include land where native title exists as well as most of the multitude of the state's Aboriginal tenures, even land where native title has not been resolved. This will give one group of Indigenous Australians rights over and above other Indigenous Australians, creating two classes of native title holders. This is unfair and would best be addressed by the Native Title Act. It is questionable what this policy is trying to achieve by extending native title in one part of Australia. Also, it will give veto powers over wild rivers but not over any other developments, such as mining. It is clearly not a genuine policy designed to redefine native title across Australia and for all Indigenous people.

Further, to obtain the written agreement of the native title party to land where native title exists, the bill provides that an Indigenous land use agreement, an ILUA, may be used. ILUAs are designed to deal with native matters and, under the Native Title Act, must meet a specific requirements to be authorised and registered. Most categories of 'owner' in the bill are not native title holders and many of the owners as defined might not have native title rights and cannot be subject to ILUAs. Even if an ILUA were an appropriate vehicle for such negotiation, the state's experience is that the development of ILUAs can be costly and time-consuming, generally taking years to reach agreement. The bill sets out time limits of six months for achieving consent for existing wild river declarations. Developing an ILUA, negotiating and drafting its terms of reference, registering it, gaining the consent of native title holders for the ILUA to act on their behalf and reaching agreement over wild river declarations all in the six months allowed under the bill is virtually unachievable. Consequently—

CHAIR—Ms Best, I am sorry to interrupt you. Senator Boswell has something he wants to raise.

Senator BOSWELL—Ms Best, we only have limited time. I wonder how long you will continue to read the report out. How much longer have you got?

Ms Best—I will only take two more minutes.

CHAIR—Thanks, Ms Best. We will get you to finish.

Ms Best—Thank you very much. Consequently, it must be assumed that the effect of the bill is that declarations will expire, even in areas where there is widespread support, where an ILUA is required. For other owners the bill provides no guidance about the nature, substance or form of the required written agreement, instead relying on the exercise of a regulation power for any detail. This regulation—and this is a very important point—is not presented within the bill, precluding proper legislative scrutiny and parliamentary consideration of the ramifications of the process. It also places the Queensland government in the untenable position of starting negotiations with owners to meet the six-month deadline without knowing the regulatory requirements. In the six months provided to reach agreement before the wild rivers declaration ceases to have effect it is essential that all details about the process of the agreement are known before any bill is passed. Of even greater concern is the bill's attempt at defining the owner of Aboriginal land, which would see the inclusion of entities or individuals who traditionally or otherwise are not part of the group and the exclusion of individuals from the group who traditionally or otherwise are part of the group.

I would like to make the point that it is not consistent with other Queensland legislation such as the Vegetation Management Act. An example of the difficulty would be the inclusion of the trustee of a reserve for Aboriginal purposes under the Land Act 1994. We would have the Department of Communities as the trustee of the reserves being required to provide written consent to demonstrate the consent of Aboriginal people. That is one example. How can the bill work if the definition of Aboriginal people is not sufficiently clear and precise and includes some individuals and excludes others from the agreement? It is also questionable whether the bill demonstrates sufficient understanding of Aboriginal tradition and the way in which agreement is achieved by those empowered to speak for country. Queensland submissions have argued that the bill fails in its objective of protecting the interests of Aboriginal people within wild rivers areas to own, use, develop and control that land. The state's view is that this objective is best achieved and is indeed consistent with the planning and development arrangements called up through a wild rivers declaration.

Since the introduction of this legislation, there has been substantial consultation with Aboriginal people and communities—granted this process has improved over time and will improve further with Minister Kate Jones' recent announcement of a Sustainable Cape Communities initiative. This initiative will see the establishment of Indigenous reference groups set out in the legislation to provide legitimate and representative advice to the minister from those nominated by communities to speak for country on wild rivers declarations. Interestingly, this proposal was discussed and confirmed in writing with the Director of Cape York Institute, Mr Noel Pearson, in 2009. However, we have yet to receive a response to those discussions around this new model.

We ask the Commonwealth to work with Queensland in establishing enduring governance arrangements across a range of matters for consultation in the cape, not just wild rivers. We want to build capacity across communities to represent themselves in discussions about their land, and we respectfully ask that the Senate give these arrangements a chance before taking the place of the state legislature. Queensland can only come to the conclusion that this bill is not about what it purports to be, but rather intends to render Queensland environmental law unworkable. The bill seeks to unite Aboriginal people in wild rivers areas; it is doing the opposite. It seeks to provide certainty for development; it is doing the opposite. Wild rivers simply puts a development assessment framework on developments that would adversely impact on the values of the river system. This does not mean camping, grazing, tourism, dams for stock and domestic purposes, housing or market gardens cannot occur. It does mean open-cut mining and large dams that would affect flow cannot occur in a high preservation area.

As outlined in our submission to the House of Representatives inquiry, there is no difference in the level and type of development applications being lodged and approved before and after the wild rivers legislation. Of the more than 170 development applications received by this department, more than 140 have been granted in relation to mining activity, riverine protection permits and approvals under the Vegetation Management Act and mining tenements. There are, however, significant impediments to economic development in Cape York, including distance to markets, extreme climatic conditions, poor soils, reliable access to water, lack of infrastructure and skill shortages.

Queensland has been working with communities to address these issues, acquiring more than 1.6 million hectares of land since 1994 in collaboration with traditional owners. Some 617,000 hectares have been transferred to Aboriginal ownership and 575,000 hectares of new national park have been finalised and formal joint management arrangements have been established for all new and existing national parks on the peninsula. Were the bill to be enacted and the wild rivers declarations become ineffective, the consequential uncertainty created seems to offer little towards the policy objective of protecting the traditional owners of Aboriginal land within the wild rivers areas to own, use, develop and control that land. Indeed, because the bill is ambiguous and not drafted in a sufficiently clear and precise way, the exact opposite outcome is extremely likely. Thank you.

CHAIR—Senator Boswell, you have some questions.

Senator BOSWELL—Miss Best, the Queensland government's response to the House of Representatives standing committee into Indigenous economic development in Queensland in view of the Wild Rivers Bill 2010 asserts that on 31 March 2009 Minister Robertson wrote to the Premier. Can you confirm that, please? On 31 March, Minister Robertson wrote to the Premier.

Ms Best—Yes, I can confirm that, Senator Boswell.

Senator BOSWELL—The letter advised that he had considered the results of community consultation and all properly-made submissions. That is in the letter, isn't it?

Ms Best—Yes.

Senator BOSWELL—The minister requested permission to submit the declaration for approval by governor in council at the next executive council meeting, to be held on 2 April 2009. Is that correct?

Ms Best—Yes.

Senator BOSWELL—The ministerial briefing note was not forwarded to him until after 4.57 pm on 1 April 2009. That is what the department's system indicates. Is that correct?

Ms Best—That is what the system records. That is when an administrative assistant enters it on the database. A brief is progressed before that, but it is when the admin assistant actually records it.

Senator BOSWELL—How could the minister tell the Premier the day before receiving the ministerial briefing that he had considered the consultation and all properly-made submissions? How could he have done it? He was not aware of it until 4.57 pm on 1 April.

Ms Best—He was aware of it, and I know from the freedom of information documents that many of these briefing notes are in the public arena. All relevant material was provided to the previous minister, the Hon. Craig Wallace, in February. The materials—and they were in folders—included all the public submissions and they did include detailed analysis of those public submissions. When the Hon. Stephen Robertson was sworn in as the minister for natural resources, mines and energy and minister for trade—that was on 26 March—the minister was in receipt of a submission made on the Archer, Stewart and Lockhart declaration proposal. In terms of what was provided to him, there were fairly large folders with all those submissions in them. We have a detailed analysis in the front of those folders, which would include analysis by issues, analysis by stakeholder groups and there were also briefings of the ministers by senior officers, myself being one of them, around those materials in those folders—as well as a range of other materials that we were required to brief an incoming minister.

One of the things that was not with that folder is a consultation report. Under the act we are required to provide a consultation report within 30 days of a declaration being made. We did not do that. We were working on a consultation report within the 30 days, but Minister Robertson instructed us that in future declaration proposals he would like to release the consultation report at the same time that the declarations are being made, because he thought it was appropriate, rather than waiting the 30 days, that we provide that information back to people who had made submissions. One of the improvements that we have made to our process since that time has been the production of a consultation report which is released at the same time as when the declarations are made.

Senator BOSWELL—Could I interrupt you there, please? I am concerned that the minister received an advice at 4.57 pm on 2 April, and I understand the public submissions were with that briefing note.

Ms Best—The public submissions were already in the minister's office and he was briefed on them, and then they would have been with the briefing note again. As I said before, the time that you are recording would be the time that an administrative assistant was recording it on the system. The minister definitely had the folders in his possession for his scrutiny prior to the briefing note going in. We make multiple folders, because I need one for the director general, myself, the minister, his offices, and then we attach one to the briefing note.

Senator BOSWELL—I would like to keep moving on this. In the same response to the standing committee, the Queensland government advised that CTS 02637/09 was signed by the minister's office on 1 April 2009. It was signed by the minister's office. When did the minister sign the briefing note?

Ms Best—The minister himself signed the briefing note.

Senator BARNETT—When?

Ms Best—Have I missed something there, Senator Boswell?

Senator BOSWELL—I want to know when the minister signed the briefing note.

Ms Best—The minister signed the briefing note himself.

Senator BOSWELL—When did the minister sign the briefing note?

Ms Best—On 1 April. I could not give you the time because we do not record a time that the minister signs a briefing note.

Senator BOSWELL—The minister signed the briefing note on 1 April?

Ms Best—Yes.

Senator BOSWELL—Well, why did you tell us that the office signed the briefing note on 1 April? You said, in response to the standing committee, the Queensland government advised that CTS 02637/09 was signed by the minister's office on 1 April. Now you are telling me that the minister signed it on 1 April. So there is a very large inconsistency there.

Ms Best—Senator Boswell, I would have to check for that question you have asked me about the minister's office but certainly the minister signed the briefing note. And I think that particular briefing note is in the public arena.

Senator BOSWELL—All right. He signed the briefing note on 1 April and yet Minister Robertson asked the Premier to put this before the Executive Council on the 31st, before he signed the briefing note.

Ms Best—As I stated before, when the minister took up office the briefing materials with all the public submissions were there available for the minister, as are briefing materials on a whole range of topics—

Senator BOSWELL—But cannot you see that you have signed a briefing note, which you say is the instrument, on 1 April. But before you signed it you asked the minister to put it before Executive Council. Can't you see the inconsistency in that? You cannot sign an instrument off on 1 April when you have asked—

Ms Best—Mr Boswell, it—

Senator BOSWELL—Please hear me out, because I want this to go on the record. In your own admission there, you have signed the instrument on 1 April 2009, but you asked the Premier to put it to the Executive Council before you signed the briefing note.

Ms Best—Normal protocol, normal administrative arrangement, would be to write to the Premier to seek permission to put something on the Governor in Council agenda, but that does not mean that the minister has to have signed the brief before the minister writes to the Premier. It is really about making sure that the administrative processes for Governor in Council are manageable and able to be delivered in an appropriate time frame.

Senator BOSWELL—Is the briefing note that we are talking about,CTS 02367/09, the instrument that section 15 requires?

Ms Best—Yes. This is the part of the Wild Rivers Act approval process that the minister makes the declaration—

Senator BOSWELL—This is the instrument that section 15 of the act requires—that is my question. This is the instrument by which the act is secured?

Ms Best—The decision-making process of the Wild Rivers Act is that the minister must make a decision to proceed or not to proceed. It is in section 15 of the Wild Rivers Act.

Senator BOSWELL—I am asking you if this briefing note is the instrument that section 15 requires? Is this the briefing note that he signed?

Ms Best—Yes. If the minister makes a decision pursuant to section 15 of the Wild Rivers Act—

Senator BOSWELL—How could he sign a briefing note that says that you will do such and such to wild rivers on 1 April? He signed the briefing note on 1 April and he wrote to the Premier on 31 March, the day before, so he has not signed off on it.

Ms Best—No, but as I said before—

Senator BOSWELL—Did this briefing note go into the Executive Council?

Ms Best—It would be part of the ministerial—

Senator BOSWELL—How can it go into the Executive Council before he has even signed it?

Ms Best—As I said, the letter to the Premier is part of normal administrative arrangements.

Senator BOSWELL—I am not interested in the letter to the Premier.

CHAIR—Senator Boswell, I think Ms Best is trying to explain the process to you, so let her do that. I remind you that we have other senators here wanting to ask questions and that we are actually inquiring into the legislation before us, not the process that led to the declaration of the wild rivers. Ms Best, continue with your answer. You will be uninterrupted this time.

Ms Best—Thank you, Madam Chair. As I said, the fundamental requirement of the Wild Rivers Act is that the minister considers the results of the public submissions, the minister makes a decision and the minister seeks governor in council approval to declare that part of the state a wild river area or otherwise. So the process is followed, adhered to the Wild Rivers Act.

Senator BOSWELL—Thank you, but I am asking you if this briefing note went to the Executive Council on 31 March.

Ms Best—The declaration goes to governor in council.

Senator BOSWELL—You have admitted that the briefing note is the declaration under section 15.

Ms Best—The briefing note is the decision-making tool to make the declaration.

Senator BOSWELL—And that would have had to go to the governor in council?

Ms Best—Once the minister either endorses or does not endorse—and if the minister did not endorse that briefing note then the minister would have had to put a public notice out to the effect of why he decided not to declare. A separate range of documents go to governor in council, including the declaration.

Senator BOSWELL—So you have admitted that it went to the governor in council, but he did not get it until 1 April but he sent it on 31 March. How can you send something that you have not got?

Ms Best—As I have said previously, the normal administrative arrangement is to write to the Premier in advance. It did not mean that he had made the decision. He was still considering the submissions. He was alerting the Premier to the possibility. It is part of our normal administrative arrangements for a minister to write to the Premier about going to governor in council.

Senator BOSWELL—But you are saying that he put the briefing note, which is the instrument, into the governor in council.

Ms Best—What I said was that that is the decision-making process for him to decide whether to declare and then a range of materials, including the wild river declaration, go to governor in council.

Senator BOSWELL—Can you tell me how this matter qualified for inclusion on the executive council's agenda as a late minute? It would almost have to be very—

Ms Best—I do not think it is within my remit to make a comment on. I do not have anything to do with the agenda for governor in council, so I really cannot comment on the formulation of the agenda for governor in council.

CHAIR—We have to move on, Senator Boswell.

Senator BOSWELL—I have one more question, if I may. When did this briefing note, this instrument that you have admitted was required under section 15, go to the governor in council?

Ms Best—It was considered by governor in council on 2 April.

Senator BOSWELL—It went to the governor on 2 April?

Ms Best—Yes.

Senator XENOPHON—I want to focus on the difference between this bill and the previous bill. Is the Queensland government saying that it is broader in terms of the land that it would apply to?

Ms Best—I will ask Leslie Shirreffs to answer that one. We are getting a piece of paper here.

Senator XENOPHON—I have one more question on issues of consent as well, Chair. While you are considering that, Ms Best, can I go to the only other question I have. When I went to visit Cape York in January, when I went to Aurukun, Lockhart River and Coen, the message I got loud and clear from the community was that there was a distinct lack of consent and consultation with the community about the wild rivers legislation. Many members of the community felt quite insulted that they would not consulted in relation to the declarations. Could you comment on that? I think there is very deep seated concern in the community about that.

Ms Best—With the consultation on the cape, the standard process is four months to do consultation, but we take far longer than that. We estimate we would have spent up to 18 months undertaking a range of consultation processes on the cape. What we are very cognisant of is trying to make sure that we get to as many people as possible and make them aware of what the wild rivers legislation is about. We like to hear their views on the natural values in the area, because part of it is making sure that we have picked up all the natural values that they want protected, all the areas of concern that they might have. We go back many times to talk to different groups and we use different ways of talking to groups. We actually paid Balkanu money to assist us in working with various groups in the communities to ensure that we got to as many people as possible.

Senator XENOPHON—I am conscious of time constraints. Perhaps you could take it on notice. If it is not too difficult to do in the next week or so, could you provide details of the nature and extent of consultation? The feedback I got, not just from community leaders but from people in the local communities that I went to—Coen, Aurukun and Lockhart River—was that there was no real, effective consultation before the declarations were made. I think that was a very genuine concern for the people that I spoke to.

Ms Best—We would be more than happy to provide that to you, because we had over 100 meetings with more than 300 people. We will provide geographical locations, times et cetera for you.

Senator XENOPHON—If you could, that would be great.

Ms Best—We are more than happy to do that.

Senator XENOPHON—The other issue was one of the extent of the land. I want to home in on the difference between this bill and the 2010 bill.

Ms Best—I will defer to Andrew Luttrell to answer that for you, Senator.

Mr Luttrell—The bill certainly uses a different window to describe the land over which the owner of that land must consent, in the sense that the previous bill spoke about native title land; the current bill describes Aboriginal land. So, arguably, there would be land which would not be native title land—that is, areas where native title was extinguished—which falls within the definition of Aboriginal land: that is, falls within the definition of the new bill; that is, not in the old bill. That is undoubtedly true.

Interestingly, I suppose that the definition of Aboriginal land includes some interests but not other interests. So, for example, a trustee lease under the Aboriginal Land Act is not actually included in the definition of Aboriginal land. And I think Debbie, in her opening statement, indicated, for example, that there are a number of inclusions of owners of Aboriginal land which we do not think would be traditionally a part of the decision making group of the Aboriginal people. Equally, there are a number of people who are excluded by this definition of Aboriginal land—that is, where you require the consent of the owner of that land.

Senator XENOPHON—So it is broader, in your view, but it is just a different way of dealing with the issue from the proponents of the bill's perspective?

Mr Luttrell—Yes. I guess it does not solve the problem which I think we have also identified, and that is: trying to work out when you have the agreement of the Aboriginal people. In that sense, it might actually, arguably, be a weaker position, because more people have now been included than, potentially, those who would have been included if it were just native title land. The issue that we have identified is that of having to have 100 per cent consensus of all the owners. We are unaware of any other legislation where you need 100 per cent agreement of all owners to say there is an agreement.

Senator XENOPHON—That is not the case though, is it? It is the representative bodies that would have to, through their own mechanisms, determine what—

Mr Luttrell—I would disagree with that. Some of the owners would actually be individuals. So, for example, the owner of a perpetual lease under the Aborigines and Torres Strait Islanders (Land Holding) Act has to be an individual. So you would not have had a corporation that was representative of the interests of the Aboriginal people there; you would have had a person who, in 1985, 1991, made application for what we called a homeownership lease in that community. So I do not think it is fair to say that it is all working through institutions or representative institutions of the Aboriginal people.

Senator XENOPHON—So in those cases where you say it is an individual, are you saying that this bill would require that individual's consent insofar as that portion of the land that they have the lease over—

Mr Luttrell—Yes.

Senator XENOPHON—Right. I am conscious of time, so if there is anything else you wanted to put, on notice, in terms of those technical aspects, I would appreciate that. Finally, on the issue of consultations—and I appreciate that you will be sending me some more details on that—could you just provide details of the quality of those consultations? In other words, what was the nature and extent of it? Was it a case of saying, 'This is what we are planning,' or, 'What do you think of this particular plan?' I guess that is one way of putting it in shorthand.

Ms Best—We will try and make sure we capture that as well. We could also indicate where some elements of the declaration changed as a result of consultation, when people provided feedback; some of the changes reflected what they were asking for.

Senator XENOPHON—I guess I am reflecting on the concerns that were put to me by communities and individuals that I spoke to in January. It was a real concern to me that they felt that they were out of the loop and were not fully consulted. But anyway, I would be grateful to look at the answers to those questions on notice.

Ms Best—Okay.

Senator XENOPHON—Thank you very much.

Senator FURNER—Ms Best, thank you for your submission to the House of Representatives concerning this matter. I note that, in appendix 5, you have attached the ABS stats for economic development up in the cape, and that during the period 2006 to 2010 there was a change—an increase, in fact, in employment of some 546 jobs, or a 0.52 per cent increase. There is also, in one of your appendixes, a copy of the development approvals—some 170, I believe you quoted in your opening statement?

Ms Best—Yes.

Senator FURNER—Have you got any statistics as a result of those development approvals? Has there been an increase in those 546-odd jobs since 2010? Do you have any figures in that respect at all?

Ms Best—We have not done any analysis across those development applications and employment statistics, but we can certainly ask the appropriate agency and government to check what analysis they have done. I know they have been working on that as part of their proposed economic development strategy.

Senator FURNER—If you could, that would be helpful. In your current submission you raise a concern about the likelihood of loss of employment. You cite some 40 rangers and the likelihood of the loss of an additional 60 positions. Where do you draw that conclusion from? I note that, in part 4(3)(b) of the bill, there is a provision in there that states: 'Should the enactment of this act result in the loss of employment by persons employed or engaged to assist in the management of a wild river area, the Commonwealth government will pick up the tab for loss of those conditions.' I guess it refers to persons, so it could apply to more than rangers. Is that your view? Are you specific in terms of it only having application to rangers?

Ms Shirreffs—That relates specifically to the employment of wild river rangers where there is a commitment from the Queensland government of 100. Forty have already been appointed and, whilst the bill provides some certainty, the Aboriginal communities have asked us to move to secure that in legislation so that those 40 jobs are protected. It would be unusual for a Commonwealth bill to terminate employment, but they do not think the bill is prescriptive enough to understand how that guarantee of employment would actually translate into employment conditions and engagement of those people on a continuing basis in the way that we have agreed with communities.

Senator FURNER—In terms of their employment I take it that they would currently be employed under an industrial state instrument of an act of parliament. This bill seems to suggest the Commonwealth government possibly stepping in to assist them in that regard. Is that your understanding?

Ms Shirreffs—Currently, they are employed by communities, which is the preference of communities. But under the wild rivers legislation we have got to provide certainty for continuing employment because of the uncertainty created in the current climate. I do not think the bill is clear enough in telling us how they would be employed by the Commonwealth government or where that funding has been provided. That would also fall short of the Queensland government's commitment to provide 100 rangers, because I would assume that the bill refers to those who are currently employed.

Senator FURNER—That is right. I do not have any further questions.

Senator BARNETT—Mr Luttrell, you are a lawyer, are you not?

Mr Luttrell—I have legal qualifications.

Senator BARNETT—You appeared before this committee at the last hearing; is that right?

Mr Luttrell—I appeared in Cairns, yes.

Senator BARNETT—I thought you did. Senator Boswell has been asking about a briefing note, 0263709. Would you describe that as a briefing note or a declaration?

Mr Luttrell—I am not actually familiar with that document.

Senator BARNETT—I thought you were. As a lawyer, I am asking you whether it satisfies the description of a wild river declaration pursuant to sections 15 and 16 of your Queensland Wild Rivers Act 2005? Is that a yes or a no?

Mr Luttrell—I am not familiar with the document.

Senator BARNETT—We have been discussing it for the last 50 minutes or thereabouts.

Mr Luttrell—I acknowledge that, but I am not familiar with the document.

Senator BARNETT—If you cannot answer it, I will ask Ms Best. Ms Best, what is your answer to that question?

Ms Best—Your question, again, was: am I—

Senator BARNETT—Is this ministerial briefing note, 0263709, a briefing note or is it a declaration pursuant to clauses 15 and 16 of the Wild Rivers Act 2005?

Ms Best—It is a decision-making tool to declare the declaration or to make the declaration. Once the minister decides to make the declaration, the declaration is attached to the briefing note.

Senator BARNETT—Was it attached to the briefing note?

Ms Best—Yes, it was attached to the briefing note.

Senator BARNETT—Where is it? We do not have a copy of it in front of us. I have asked for this document. I asked for it in Cairns, I asked for it on notice and you have not provided it to this committee. I asked for that declaration and it has been refused. You are telling me it has been provided. I would like it and I would like it immediately. Do you have it in front of you?

Ms Best—I have my own copy of the briefing note in the information that—

Senator BARNETT—No. I want the declaration. Let us confirm one thing: this briefing note is not a declaration. Do you agree with that?

Ms Best—The briefing note is a decision-making tool for the declaration. Terry Boyle is just saying to me that he is fairly sure the declaration is actually on our website. So it is not a case of refusing to provide information to you. I apologise if you feel that you have been refused information. I am more than happy to have discussions about how we can get the information to you. My advice is that it is actually on the web. So it is publicly available.

Senator BARNETT—We have asked for it in Cairns, we have asked for it on notice and it is so difficult to get it to us, so we will be fascinated to see whether it is on the website. Let me just confirm one thing: you are saying that this is a briefing note, not a declaration. Let me just clarify with you: this is not a declaration, it is a briefing note? Is that right?

Ms Best—It is the minister's decision and it recommended that the minister approve the declaration. The minister has got 'approved' on the top.

Senator BARNETT—Where has he signed that?

Ms Best—He has signed it on the top. He has circled 'approved' and that is his signature. This is the copy I have in front of me.

Senator BARNETT—As far as you are concerned, it says down here at the bottom: 'Proposed action. Subject to minister's approval, the department will progress the above-mentioned documents to the Governor in Council.' So, with his approval, it has gone to Governor in Council, has it not?

Ms Best—Yes.

Senator BARNETT—So it is not a declaration; it is a briefing note, which he has approved and which has gone, according to your advice, to the Governor in Council? Correct?

Ms Best—I am just not understanding what you are asking. I do apologise if I do not have it clear. Our standard process—and this is according to our legislation—is to provide information to the minister and the minister signs the brief. It then gets attached to the briefing note and then the dec—not the briefing note—that was attached gets sent to the GIC. I am more than happy to make sure that we send you personally a copy of the dec that was attached to this briefing note. It is on the web.

Senator BARNETT—Will you forward to the committee everything that is attached to that ministerial briefing note that you have in your possession? Do you give that undertaking?

Ms Best—I understand that the committee already has that.

Senator BARNETT—No. I am asking you to forward to the committee whatever you said you have in front of you, which is the briefing note and all of the attachments, which also include the declaration or proposed declaration. Are you willing to undertake to forward that to the committee?

Ms Best—As we have already provided the information, I do not see a problem with it. But it is disappointing—

Senator BARNETT—It has not been provided, Ms Best.

Ms Best—that you focus on this particular aspect of the inquiry, which I thought was outside the terms of reference. If you have had difficulty finding the materials that have already been sent, we are happy to send the materials again.

Senator BARNETT—I am asking you to do what I have just asked, and I am asking you to undertake to do that.

Ms Best—I just said we are more than happy to provide—

Senator BARNETT—Thank you very much.

CHAIR—Ms Best and your colleagues, we do not have any further questions for you. So I thank you for your submission and the time you have taken to assist us with our inquiry this afternoon.

Ms Best—Thank you, Madam Chair. There are couple of actions for us to follow up on, which we will do through the secretariat. We would like to thank you, again, for the opportunity. Also, we would like to table our opening statement, so we will send that to the secretariat so that you have a copy of it.

CHAIR—Thank you very much.

Proceedings suspended from 3.25 pm to 3.38 pm

ESPOSITO, Mr Anthony, National Manager, Indigenous Conservation Program, Wilderness Society

SEELIG, Dr Tim, State Campaign Manager (Queensland), Wilderness Society

Evidence was taken via teleconference—

CHAIR—Welcome. We have a submission from you, which we have numbered eight for our purposes. I ask you to make a short opening statement and speak to that submission. When you have finished, we will go to questions.

Dr Seelig—Thank you for this opportunity. As Senator Crossin has just mentioned, we have made a submission to this specific inquiry and of course we have made very important and substantial submissions to both the previous Senate inquiry and the current House of Representatives inquiry. The second one is not only looking at the Scullion-Abbott bills but also substantially taking that into account. We recognise that the new Senate inquiry is happening while the House of Reps inquiry is still continuing. The introduction of the bill into the Senate again when that Reps inquiry remains was, in our view, premature. This is the second time we have had two simultaneous bills in the two houses of federal parliament. We were just musing as to whether that is an unprecedented phenomenon. We think that—I am sure in common with others—at one level it is disappointing to be here at yet another inquiry hearing. But at another level it is very positive that this bill is being placed under additional scrutiny. We certainly very much welcome this new inquiry.

In our submission to this inquiry and our previous submissions we have raised a whole range of issues around why we believe wild rivers is a very important initiative. We have critiqued the arguments against it and the campaigns that have been run against it and so on. But we wanted to focus very specifically on the bill here, as we believe that that is really what the terms of reference are proposing.

We believe this bill has serious design flaws. It creates a whole series of contradictions and conflicts with the Native Title Act. It has some major interpretation flaws. Its definitions of Aboriginal land, of owner, of agreement and so on are confused. It introduces terms and concepts from the Native Title Act whilst not trying to actually apply them on native title issues per se. The bill has serious explanatory flaws, particularly in the fact that there still are no explanatory notes, despite that issue being raised this time last year. There are no other additional explanatory materials that might help us understand where this bill has come from and precisely what it is trying to achieve.

We believe the bill has a misleading title and purpose as stated, as it does nothing to advance environmental protection. In our view, it does nothing to properly advance Indigenous rights and interests in a consistent way across the board. We believe the bill is divisive, ill-informed and will necessarily lead to legal confusion and constitutional contests and could create a bad public policy and legislative precedent. The bill seems intended to make existing wild rivers declarations null and void and to make it virtually impossible for new ones to be created. In our view, we can expect these outcomes if the bill becomes law.

As we raised in our submission, there are a number of specific problems and issues with specific clauses in the bill. We would be happy to run through them at your request or to answer any other questions you might have of us. Thanks.

CHAIR—Thanks, Dr Seelig. Mr Esposito, do you have anything you want to add to this?

Mr Esposito—Yes, I will just add a comment. I concur with what has just been said. I want to address the proposition that is made out that the Wilderness Society is against Indigenous rights or would forgo Indigenous rights to achieve a conservation outcome. I just want to state for the record that that is completely wrong. We have spent nearly two decades working at the interface between conservation and Indigenous rights. We have embraced the challenge. We think there are some really important issues and they can be done well and properly, to the benefit of both the environment and Indigenous people in the community at large.

Our fundamental problem is that this bill goes nowhere close to understanding the issues, addressing the issues and providing an equitable, clear, certain legislative framework that would enable Indigenous rights and enable conservation. For a bill that is entitled the Wild Rivers (Environmental Management) Bill it is a farce in its failure to actually address environmental issues. We have spoken many times on this bill and variations on it and will continue to do so. We do not support it, not because we do not support Indigenous rights—because we do. We do not support it because it is a bad piece of legislation, in our view.

CHAIR—Thank you very much. Senator Xenophon, are you still there?

Senator XENOPHON—Yes, I am.

CHAIR—I need to inform you that I do not have any coalition members present in this room at this point in time.

Senator XENOPHON—What does that do for quorums?

CHAIR—It makes us inquorate, actually. We can either proceed regardless, or we would need to make a decision to suspend the hearings until we are quorate again.

Senator XENOPHON—Chair, I will be guided by you as to whatever you think is appropriate.

CHAIR—We will try to locate either of those members. I have a view that we do have witnesses who have made themselves available, so I am going to go to Senator Furner for questions first, and then I will go to you, Senator Xenophon. Hopefully Senator Barnett or Senator Boswell might return.

Senator FURNER—In the introduction of your submission you refer to the bill 'failing to address the principles of the UN Declaration on the Rights of Indigenous Peoples. Can you expand on that particular issue, please.

Mr Esposito—There seemed to be a statement of intent from the Leader of the Opposition when he introduced the bill into the lower house that it was somehow to give some effect to the UN Declaration on the Rights of Indigenous Peoples, with particular reference to free, prior and informed consent. Neither on that particular principle nor on the declaration as a whole is any substantial argument actually made. We do not see evidence in this bill of any of the 26 or so provisions of the UN declaration being given effect.

On the matter of consent, which seems to be at the nub of this political issue, again it draws on no international references, no international laws, no precedents and no arguments as to why this in fact constitutes a provision of consent. Consent is a principle. The declarations are principles that give effect to rights. The right here is self-determination; we accept that. But again there is no mention of self-determination, there is no extension of the principle of self-determination to all Indigenous people for whom this right attaches. It is a very selective and political use of a reference to achieve a particular end, and the end itself is not to give effect, to advance or to promote the UN Declaration on the Rights of Indigenous Peoples.

Senator FURNER—On page 4 of your submission you reference clause 3 of definitions—problems and concerns. The second dot point reads, 'empowers non-representative bodies to make decisions'. Who are those non-representative bodies you are referring to?

Mr Esposito—They can be any number of groups. It mentions a whole host of organisations. In terms of representativeness—whether that is a land trust, an Aboriginal council or the land council itself and some of its functions, or Balkanu Cape York Development Corporation, some of these organisations have mandates or limited mandates. They do not necessarily, and often do not, represent the views of the traditional owners, for country, who have the right to speak for country when it comes to the particular matter of consent. So there is actually no mandate here. Even constituted groups like the land council have a limited mandate. They have a head of power under the Native Title Act and they have a mandate provided by their members. Not all Aboriginal people of Cape York, or anywhere else for that matter, are members of their land council. In that respect, its mandate derives from its membership, not from the traditional owners of places like Cape York. The rights attach to the traditional owners, and one of those rights is to freely elect or nominate their representatives on particular matters. And so, with any such things, a mandate is required. This bill is essentially creating another head of power for a range of Indigenous organisations, some of which may or may not have some limited mandate to represent a position on wild rivers or otherwise and is now effectively handing them a power of veto.

Senator FURNER—Okay, I understand that point. Sticking with clause 3 you then go on to the definition of land and native title land. You infer that there may be situations where, for example, a partial lease held by a non-Indigenous person may cause some conflict in regard to the bill. Can you expand on that particular issue for me?

Mr Esposito—The simple fact is that this describes a native title interest as being a way in which Aboriginal interests can engage on this issue and exercise a veto. Given that the Wik decision actually emanated from Cape York and was to do with a pastoral lease and gave rise to a whole body of native title law, it is pretty clear that native title rights and interests exist in the pastoral leases stakes, whether it is owned by Aboriginal people or non-Aboriginal people. The bulk of the pastoral properties in places like Cape York are owned by Aboriginal people, but, beyond doubt, in almost every instance they have native title rights and interests attached to them, native title claims over them and so on. So it would appear from this bill that the native title claimant or holder with respect to rights and interests in a pastoral lease—coexistent rights and

interests in that sense—owned and operated by a non-Indigenous person would be able to exercise their native title rights in that property to veto a declaration.

Senator FURNER—You say in your submission that the bill will lead to destructive development taking place in culturally and ecologically sensitive areas. What evidence do you have of that occurring?

Mr Esposito—For example, the Cape Alumina an example—which, I might say, was a proposal that preceded in the full knowledge of the Wild Rivers Act and the pending nomination of the Wenlock River. Had the wild rivers initiative not been in place and the declaration proceeded, that area would for all intents and purposes have been exposed to the full impact of broadscale bauxite mining. That would have had massive impacts on sensitive ecological systems and very important cultural areas. So there is no doubt that, as a regulatory mechanism, it prevents certain types of destructive activities close to, or in, the import river systems and the catchment at large. Without that regulation you are essentially exposing vast areas of places like Cape York, the Gulf of Carpentaria and the Channel Country, which is where these rivers predominantly are, to a much less regulated—and, in many respects, unregulated—industrial development approach. As we have argued before, the scheme is an important piece in the whole regulatory apparatus to ensure both sustainable development and the protection of critical natural and cultural assets.

Dr Seelig—The other thing that wild rivers does that nothing else will do is provide a whole of basin system level of protection. It is about stopping destructive development in particular places, but it is also about ensuring that such destructive development does not interfere with the rest of the river system. There is nothing else that would protect the river in the way that the wild rivers declaration under the Wild Rivers Act does.

Senator FURNER—So, using the Cape Alumina example, if the state legislation on wild rivers was not in place you would have seen the demise of Coolibah Springs and Bluebottle Spring—essentially, the upper reaches of the Wenlock River. Is that what you are suggesting?

Dr Seelig—That is right—the buffer zone that the wild river declaration created on the Wenlock River itself and special features, including the Coolibah Springs complex. There would have been no buffer zone. Strip mining, as we know, involves bulldozing the forests and digging out metres of dirt and mining out the bauxite, and that exposes lot of the river to run-off and a whole range of the effects of the mine—let alone the fact that bulldozers are running around close to a pristine river. None of that would have been prevented. The impact that might have had on the estuary downstream and potentially upstream is untold. It is hard to imagine that you would allow such mining in such an environmentally and culturally important area, but it was the wild rivers declaration on the Wenlock River that prevented that from happening.

Senator FURNER—We have heard today from some witnesses that what wild rivers does is lock up the land. What is your view on that sort of expression?

Dr Seelig—Anthony will probably expand on this, but in summary the way wild rivers works is it creates a regulatory framework that uses planning law and environmental protection arrangements to ensure that the most destructive development cannot happen in and very close to the most sensitive areas of a river system but it allows a whole range of sustainable economic development activities, as well as recreational and cultural activities, in the same areas and facilitates a whole range of development, including mining for better or for worse, in other parts of the river basin.

CHAIR—We did not get a chance this morning to ask Balkanu or the Cape York Land Council their view of this, but clearly the definition of 'owner' is now changed in this legislation. It is not consistent with the definition in the Wild Rivers Act. A number of pieces of legislation were cited by our first witnesses. The Queensland government say that the analysis of that definition is not right. Section 5 actually requires written consent from an owner for land to be regulated under the Queensland act but any consultation requirements are going to be left to regulations. We do not actually have any regulations with this bill. We have not seen them. They have not been provided. We do not even have an explanatory memorandum yet. This might be outside your brief, but I am wondering what happens when there is conflict between an owner of the land and traditional owners who might be identified as such under any native title act. Is there a perceived conflict now with the change in this definition?

Dr Seelig—Yes, and I will ask Anthony to expand on this. This new bill is a rework of a previous bill. One of the critiques of that previous bill was that it did not define 'owner' properly. In our view, they have gone from a bad bill to an even worse bill by adding complexity but not adding any clarity or transparency as to who is intended to be captured by the act other than in our view the kind of real intent which is simply to stop

wild river declarations from happening if at all possible. In our view, the definitions of 'owner' are confused. There is certainly no consistency between this bill and the Native Title Act and how wild rivers currently works. I am sure Anthony will provide you with a more specific response.

Mr Esposito—The potential for problems here is huge. These are already existing issues. The bill seems to be bringing every conceivable Aboriginal property ownership under the ambit of 'owner'. This runs contrary to a whole bunch of things or it extends rights in property to Indigenous people that are not enjoyed by others. So in the first instance of course you have traditional ownership, and that is what most traditional owners think of as ownership. Those traditional owner communities form the basis of native title claims and native title holdings and the internal governance of those native title groups.

Then you have these overlays created through historical processes of one sort or another where you have things like land trusts, which are old reserve lands, and DOGITs, deeds of grant in trust, lands in Queensland that have been handed back to trusteeships for the general interest of Aboriginal people. That is property in a technical sense. The land trust is 'owner' in a technical sense. Whether it bears an actual relationship to the traditional owners is left out of the equation. In our experience in many instances it does not and that itself gives rise to a set of conflicts.

Then you have conceivably any piece of property—for example, freehold or a pastoral lease. In conventional terms it has been bought by an Indigenous interest that is also an owner and would seem to be brought under the ambit of this bill. This is where I talk about the extension of rights and where the danger lies in this. How do you argue that a leasehold property operating under the tenure system when owned by an Aboriginal person constitutes ownership that comes with a veto over an environmental regulation, whereas a pastoral lease under pastoral legislation when owned by a non-Indigenous person does not carry that veto? Quite simply, it sheets home to the idea of an Aboriginal person with any interest in land is an owner who should have a UN inspired right to oppose the environmental regulations of the day. For us this sets up so many additional layers of problems, some of which already exist, and it will compound a number of problems.

Senator XENOPHON—I thank you for your submission and giving evidence on this. I have had a number of discussions with both of you in relation to this issue. My concern is that when I spoke to Indigenous individuals in communities in Cape York, in Aurukun, in Coen and in Lockhart River they felt that they were not consulted and that they did not give their consent to these declarations in any meaningful sense. Do you acknowledge that more could be done to appropriately consult with communities and get consent in the true sense of the word before such declarations are made?

Dr Seelig—I suppose the Wild Rivers consultation process is a Queensland government process and we understand that it is not designed to be a consent based process per se. Obviously the purpose of consultation is to identify issues that might be of concern to individual traditional owners or communities and to discuss and engage with people about the idea of the Wild Rivers protection being made and so on. I cannot speak for how thorough the Queensland government consultation process was, although we understand there were hundreds of meetings and interviews. Balkanu themselves were contracted by the Queensland government to help run the consultation process for the Archer, Stewart and Lockhart rivers—at least to the extent of facilitating access to traditional owners. As we discovered later on, because they met with us, they were brokering a collective submission on behalf of a number of—

Senator XENOPHON—I put some questions on notice to the Queensland government and they will give more details about the consultation process. I just wanted to ask both of you, given the extent of the work you have done in that area: how important do you consider it to have a meaningful process of consultation and consent for the local community? Or do you think that it is not appropriate, given the framework of the Queensland government legislation?

Mr Esposito—It is most definitely appropriate and important. We have been advocates for the engagement of Indigenous people in this conservation initiative right from the start—so there is no question in our mind. The question hinges on how those consultations happen, what level of negotiation is involved and how final decisions are made. I think this is where all of the contention lies.

In my experience of any level of government throughout my entire life their consultations with Indigenous people can always be improved. There is no doubt about that, and this is no exception. To the Queensland government's credit, they have been progressing this scheme over the last five years. It is a much more robust system than it was at the outset. It is all the better for the negotiations and the amendments that have taken place. The extent to which a government can consult with every Indigenous person in that situation is an open question. I would suggest that the representative bodies of the regional organisations have exactly the same set

of problems in terms of reaching everybody to get informed views into the mix, but there is, no doubt, a higher level of engagement already going on. It is appropriate, it should continue and it could be improved, but that is no reason to dismiss the Wild Rivers Act. The Wild Rivers Act does exactly what it is intended to do, it does it in a pretty fair and transparent manner and it is constrained entirely by the Native Title Act, in our understanding. Therefore, any questions of consultation, negotiation or participation in decision-making are best addressed at the rights level through some appropriate legal framework, and this is not one; the Native Title Act is one. The state would be constrained, if the Native Title Act were different, to do things differently. We maintain that that is the best place to address any of these concerns if in fact they are borne out.

Dr Seelig—The only other thing I would add is that I think that in normal circumstances, in a good faith consultation process like this, you would expect the cooperative assistance and the genuine efforts of the land council and anybody that they use to help run consultation processes—such as Balkanu, in this case—to actually aid the process. I think it has been very hard for us to disentangle the campaign they have been running against Wild Rivers from their having been engaged in the process of trying to assist in traditional owner consultation and even to identify traditional owners. I think the process has been made much harder by the fact that they have purported to represent traditional owner interests and were placed in a position to facilitate access to traditional owners when at the same time they were actually running a campaign against.

Senator XENOPHON—The observation I made is that, when I spoke to a number of individuals away from groups, I got the impression there was a distinct lack of satisfaction about the whole consultation process.

Dr Seelig—Senator, I make an additional point here. This is not just a failure of government; it is also a failure of those regional organisations. This is happening everywhere; I am not trying to single these guys out. The simple fact is that those regional bodies were involved in negotiations at the state level to amend the Wild Rivers Act and to do a whole range of things on a number of occasions. The question, equally, is: did they consult and have a mandate to engage in those processes? We take those sorts of negotiations and dealings in good faith and have done for many years, and we have been involved with them for many years through things like CYDC. The simple fact is that we know that there is no widespread consultation on substantive issues going on through those regional bodies. They have a leadership that takes the community in a certain direction, and if people do not like the direction they have a hard time getting their views across.

Senator XENOPHON—Thank you for that answer. Chair, I might put some questions on notice about that to the Cape York Land Council so they can respond to that and I can get the full picture.

Dr Seelig—That would be good.

CHAIR—All right.

Senator BARNETT—I want to follow up on Senator Xenophon's questions and make it clear that you have characterised the environment of Balkanu and others in that consultation process in a certain way and that it would be my hope that they would have an opportunity to respond, if they saw fit, in due course to the committee. Having said that, do you accept that there is considerable dissatisfaction with the consultation process? Notwithstanding everything that you have been saying, Mr Esposito and Dr Seelig, do you agree that there has been considerable dissatisfaction, particularly amongst the traditional landowners?

Dr Seelig—My response to that is: to say considerable you have to measure it. We do not have a proper measure of the level of dissatisfaction. We know what the views of Balkanu land council are, which are a handful of people whom we have dealt with over many years, so we know who we are referring to in that sense. We have seen the expressions of a number of opinion leaders across the community. We have not seen any demonstrable evidence of the extent to which the dissatisfaction is so great around those consultations other than from those voices. It is hard to say. That there is some level of dissatisfaction seems to be beyond doubt. There has been a national media campaign to give voice to it, but the size and loudness of that voice does not necessarily mean it is a widespread view. We are simply asking for some transparent evidence based assessment of what the community actually thinks in all its diverse views; not simply the views of those who oppose the wild rivers scheme.

Senator BARNETT—Let us ask the question in another way—slightly differently: what level of support is there amongst traditional landowners for the Queensland wild rivers legislation?

Dr Seelig—Again, I think it is subject to the same caveats. You have to measure it. One thing we know is that the level of support in the Gulf of Carpentaria is extremely high because each of the four traditional owner groups as well as the land council put those expressions quite clearly in writing in their submissions and their negotiations about the scheme. We understand in the Channel Country there is a high level of interest,

acceptance and willingness to consult and negotiate by traditional owners in that region. We know, when it comes to Cape York, that some traditional owners, and particularly quite a number of those in the actual areas where there are declarations, who either support it or are interested in the scheme; and we know, of course, there are some who do not.

Senator BARNETT—So is it more or less?

Mr Esposito—More or less what?

Senator BARNETT—Support.

Mr Esposito—How do you want to measure it? If you want to measure it by conventional—

Senator BARNETT—I want you to use your best guess. You are on the ground. You are a witness to the committee. You are experts in the field in your area of special interest. I am asking you as to whether there is a majority who support it or a majority against it.

Mr Esposito—I will give you a simple illustration—the only one that you can get: if you are looking for a majority of community opinion in Cape York then you have to take the Cape York community as a whole. The best measure we have for that is the manner in which people vote in elections, general elections. They are part of the franchised; they vote. For three elections on the trot, the three in which the state government put forwards its wild rivers legislation in the midst of five years worth of antiwild rivers campaigning in those communities, there has been majority support for the government of the day. I take that—

Dr Seelig—Including on Cape York.

Mr Esposito—including on Cape York—to be explicitly that there is a level of acceptance, a level of agreement.

Senator BARNETT—A majority level.

Mr Esposito—A majority level of community opinion, but this is quite distinct from traditional owners and those who have the right to speak for country when it comes to such questions as a declaration in a particular catchment.

Senator BARNETT—We are a bit tight for time, but I will just draw to your attention that that is in stark contrast to the evidence of Mr Richie Ahmat, the chairman of the Cape York Land Council, this morning where he indicated—and you can check the *Hansards* for yourself—I think it was 85 per cent that did not support—

Dr Seelig—They were not able to qualify the 85 per cent.

Senator BARNETT—He did use the figure of 85 per cent, so you can check the *Hansard*.

Dr Seelig—He may well have done but also, as Anthony pointed out, you have to be clear about what you are actually measuring. If you are measuring some kind of mixed range of use, including some level of dissatisfaction with wild rivers per se, are you measuring a detailed knowledge and understanding of wild rivers and a genuine dislike for it; are you measuring a level of misunderstanding and ignorance—

Senator BARNETT—I have got your message.

Dr Seelig—or are you measuring the effect of the campaign designed to create opposition to wild rivers? I would have thought it would be impossible to disentangle what you are actually measuring.

Senator BARNETT—You have just given a measurement yourself, so you have given one estimate and they have given another. I would like to move onto another area of questioning, and it is my last area of questioning, and that is your meetings with the Queensland Labor government. Is it correct that you met with them before 1 April in the days prior to the briefing note being signed by Minister Robertson regarding the declaration for the relevant wild rivers; and when was that meeting?

Dr Seelig—Who are you addressing that to?

Senator BARNETT—I assume it was Dr Seelig but either of you could hopefully answer that question.

Dr Seelig—I could not answer that off the top of my head; I would have to go and check my diary. If you are asking whether we meet regularly with representatives of the Queensland government and, indeed, the Queensland opposition, then yes. Have we met to discuss a range of issues on wild rivers? Yes. Did we meet in the particular time frame you are talking about? I cannot recall; I would have to go and check. I do recall us having a meeting with Minister Robertson shortly after he came in, but I would have to check the date. From memory, the specific conversation was about Cooper Creek and the Georgina and Diamantina rivers. I know

that there was a freedom of information application made to Minister Robertson's office, because we were alerted to that through the FOI process and had no objection to that diary entry being released. At the time that that was being processed, I do recall checking and noting that that was actually about western Queensland rivers.

Senator BARNETT—Did you meet with the minister or his representatives regarding the Lockhart, Archer and Stewart Basin wild river declarations?

Dr Seelig—I do not want to provide a misleading answer because I do not have my diary in front of me, so I cannot provide any answer to that without checking. If I can take that on notice then, to my best ability, I will respond to that question.

Mr Esposito—Is there a point to the question?

Senator BARNETT—Are you telling us that you cannot remember?

Dr Seelig—I am saying I do not want to give a misleading response, and so I would like to take the question on notice so I can check my diary.

Senator BARNETT—Okay, if you could advise us of the meetings and the points and discussions that you had with the minister in terms of, specifically, the Lockhart, Archer and Stewart Basin declarations. Would you concede that your agreement with the Labor government prior to the election was to obtain these declarations in exchange for Greens preferences in and around Brisbane?

Dr Seelig—Absolutely not. There was no such discussion; there was no such agreement.

Mr Esposito—It is a false proposition.

Dr Seelig—It is a ridiculous proposition.

Senator BARNETT—So you did not have an agreement to exchange Greens preferences for certain lockups in Cape York.

Mr Esposito—No. It is a false proposition; the answer is no.

Dr Seelig—Can I ask why you are asking that and what evidence you would have of that.

CHAIR—Senator Barnett, I want to remind you we are actually inquiring into a piece of legislation here. We are not the electoral matters committee or any other such body of the parliament, so I am going to ask you to stick to questions related to the legislation.

Senator BARNETT—That is fine. We are tight for time. I will conclude there.

CHAIR—Thank you. Dr Seelig and Mr Esposito, we do not have any other questions for you, so I thank you both for your submission and your time this afternoon.

Dr Seelig—Thank you, Chair.

Mr Esposito—Thank you all.

[4.18 pm]

JONES, Ms Katherine, First Assistant Secretary, Social Inclusion Division, Attorney-General's Department

TONGUE, Mr Andrew, Deputy Secretary, Department of Families, Housing, Community Services and Indigenous Affairs

CHAIR—Our final witnesses today are officers from the Wild Rivers Interdepartmental Committee. Do you have anything to say about the capacity in which you appear?

Mr Tongue—I am chair of the Wild Rivers IDC.

CHAIR—Thanks very much. We have submission No. 10 from you. I am going to ask you if you want to speak to that submission, but I just want to remind all senators that the Senate has resolved that an officer of a department of the Commonwealth shall not be asked to give opinions on matters of policy and shall be given every reasonable opportunity to refer questions asked of the officer to superior officers or to a minister. This resolution prohibits only questions asking for opinions on matters of policy and does not preclude questions asking for explanations of policies or factual questions about when and how policies were adopted. Having just reminded people of that, I am going to ask you if you want to provide us with a brief opening statement to your submission.

Mr Tongue—Merely to note that there are 12 or so Commonwealth agencies on the IDC. We made a judgment today that the committee would be more likely to ask about the Attorney-General's set of interests, but if there are other issues that the committee wants to go to we have put agencies on standby so we can turn questions on notice around where they go to topics we had not anticipated.

Senator BARNETT—Thank you. When was the IDC established?

Mr Tongue—I would need to check the dates. It was late last year.

Senator BARNETT—Why was it established?

Mr Tongue—Merely to draw together the range of Commonwealth interests associated with considering major issues in Cape York.

Senator BARNETT—It is called the Wild Rivers Interdepartmental Committee. Is that right?

Mr Tongue—That is right. It was established in September.

Senator BARNETT—You will give us the exact date, will you?

Mr Tongue—Yes, certainly. Yes, it is the Wild Rivers IDC. We thought, particularly because of the level of attention driven out of Cape York and the wide range of federal government activity that occurs across the cape, that as the parliament was considering the various propositions it was best to try and draw all that together rather than have multiple agencies.

Senator BARNETT—Who decided that?

Mr Tongue—FaHCSIA, my department, has a coordinating responsibility with regard to Indigenous affairs. The issue was discussed, if I recall correctly, at a whole-of-government forum that we have on Indigenous affairs and a judgment was made to take a more coordinated approach.

Senator BARNETT—Specifically, which minister decided or recommended this? Did it go through cabinet? How did it get established?

Mr Tongue—It was much more a bureaucratic thing.

Senator BARNETT—That is a bit of a worry. Ministers surely must have been consulted.

Mr Tongue—My recollection is no. We had started to move, having taken a view across departments that a coordinated approach would make more sense. It has certainly not been to cabinet, that I am aware, and I do not recall consulting a minister or a minister's office in the formation of the IDC.

Senator BARNETT—Would the cabinet have been advised?

Mr Tongue—No, not necessarily.

Senator BARNETT—Where did you get the name from?

Mr Tongue—We just thought it was a good descriptor of what we were trying to achieve—trying to get a coordinated view across the Commonwealth.

Senator BARNETT—You referred to Cape York.

Mr Tongue—Cape York seemed to be a lightning rod for concern around wild rivers.

Senator BARNETT—Sure, but what is the name of your IDC?

Mr Tongue—Wild Rivers IDC.

Senator BARNETT—Why did you call it the Wild Rivers IDC and not the Cape York IDC?

Mr Tongue—That is the issue to which we were responding.

Senator BARNETT—So it is all about wild rivers, then.

Mr Tongue—It is about wild rivers, but clearly a key area of contention is to do with Cape York.

Senator BARNETT—This was after the bill was introduced in the House of Representatives by Tony Abbott and after the bill was introduced in the Senate by Senator Scullion—correct?

Mr Tongue—Yes, I think that would be right.

Senator BARNETT—I know it to be correct because you said it was established in September.

Mr Tongue—September, yes.

Senator BARNETT—So it was well after that. But it is fair to say every minister responsible for each of the departments on the IDC would be aware of the work of the committee and the fact that it has been established. You said they had not specifically authorised it but they would be aware of the establishment of such a committee?

Mr Tongue—I cannot account for all the agencies and their briefing of their ministers, but I would expect so.

Senator BARNETT—What about your minister?

Mr Tongue—Yes.

Senator BARNETT—You have briefed your minister?

Mr Tongue—Yes.

Senator BARNETT—What about Ms Jones?

Ms Jones—Yes, we have had discussions with the minister's office about the work, particularly because the IDC prepared a joint submission to the House committee.

Senator BARNETT—And that is what we have before us today, have we not?

Ms Jones—Yes.

Senator BARNETT—That is what I have in front me. I am just being upfront. You are responding to the Wild Rivers draft bill that has been through the House and is now in the Senate. It has obviously been amended since the previous version. Are you familiar with the Wild Rivers Act 2005 in Queensland?

Ms Jones—Yes.

Senator BARNETT—And you would be familiar with clauses 15 and 16 regarding the making of a declaration?

Ms Jones—I do not profess to be an expert on them. I am aware of the provisions.

Senator BARNETT—But you are aware of those two provisions which require the Queensland government to decide whether to make a declaration and then the approval of a wild river declaration? We have had extensive discussions today with Balkanu and the Queensland government over this briefing note—CTS 02637/09. It is a public document. Are you familiar with that document?

Ms Jones—No.

Senator BARNETT—Could I ask to you take that on notice? As the Attorney-General's Department representative, you are probably the best person to respond because it is a two-page document. It has a proposed action at the end which says:

- Subject to Minister's approval, the department will progress the abovementioned documents to the Governor-in-Council for approval.

Then it has been signed by the minister as approved on 1 April 2009. We were advised by Deputy Director-General, Debbie Best, of the Queensland Department of Environment and Resource Management that that was the case. Attached to that was the declaration that was made pursuant to clause 15 and 16 of the Wild Rivers Act. How extensive would that declaration have been, in your view? Would it have been a couple of pages long, attached to this two-page briefing note, or longer than that? Would it be very comprehensive and extensive or would it be something that simply had to go to Governor-in-Council for approval and then subsequently be promulgated in comprehensive terms in accordance with the act?

Ms Jones—I cannot comment on that. I am not familiar with the exact form of these declarations.

Senator BARNETT—Sure. Let me advise you that she indicated to this committee that the declaration was attached to this briefing note. I asked her for a copy of that and she gave an undertaking that she would provide that to us. I am looking forward to receiving it. She also referred to the fact that the declaration was on the website. Subsequent to her evidence, I have kindly received from the secretary a downloaded copy of the declaration. I just wanted to indicate to you that it is some 34 pages long. It is very comprehensive and goes through all the different aspects of a declaration as set out in the act, which is entirely understandable.

My strong view is that I am absolutely flabbergasted if that particular declaration for those three rivers—you have 34 pages each for the Stewart, Archer and Lockhart basins—would have been attached to a two-page briefing note, which then went to the Governor-in-Council. This is clearly an issue for the Queensland government. I am asking you, with your experience and background in dealing with declarations, if you have ever been involved in the attachment of such an extensive and comprehensive document to a briefing note that needed to be signed off by Governor-in-Council? You may not be able to answer that question.

Ms Jones—I am afraid I cannot in terms of my responsibilities. There is no equivalent of a declaration type process that I can make reference to.

Senator BARNETT—No problem. That is all on the *Hansard* now, and of course the Queensland government will draw that to the Queensland government's attention so that we will get an answer back from them as soon as possible. I do not have any further questions at this stage.

Senator FURNER—In your submission, you identify a number of problems in the drafting of the bill, and I will work through a number of those issues. Firstly, it is in my opinion generally accepted that only a traditional owner—and that is the people, according to Aboriginal law and custom, that own the land—should be able to speak for land and make decisions about its use.

Ms Jones—Sorry, Senator, I am not quite sure I understand the question.

Senator FURNER—I indicated that in my opinion it is generally accepted that a traditional owner is the people who, according to Aboriginal law and custom, own that land and therefore being able to speak for the land and make decisions about its use.

Ms Jones—Certainly in the Native Title Act it provides for recognition of traditional ownership and exercise of traditional rights and customs. There are different types of Aboriginal land regimes that recognise slightly different types of interest, whether they are traditional owner interests or historical owner interests. That is one of the issues in terms of the current drafting of the bill as to how those types of interests could be reconciled when they may overlap in terms of an area of land.

Senator FURNER—So therefore what is the decision-making role of traditional owners under this bill?

Ms Jones—The bill provides that there is a concept of an owner of land, and that is linked to the concept of Aboriginal land, which is defined in clause 3, I think. This is a new definition in the current bill that replace the previous definition in the bill that was introduced last year. It refers that the term 'owner' in this context refers to both native title holders as well as persons with an interest in Aboriginal land such as that in each of the categories that are set out in the definition of Aboriginal land. I know that sounds quite complex and I think that one of the issues that is not completely clear on the face of the legislation is whether the agreement of the owner needs to be sought at a particular time and how the agreement of the different types of interest holders will be obtained.

Senator FURNER—I imagine there are native title holders already in the cape, particularly in places of wild rivers. Have there been situations where traditional owners and other Aboriginal landowners that fall under one of the types of land listed in the bill are neither traditional owners or native title holders?

Ms Jones—In terms of the categories that are in the current version of the bill, there would be types of owners that do not come into the definition of traditional owner or native title holder. That could be under the

Aboriginal land rights act. I think there is a different definition around historical owners. There are different categories of owners.

Senator FURNER—Are they the only categories that you can think of at this stage?

Ms Jones—I need to take that on notice because there are seven or eight different categories of Aboriginal land as defined in the bill, so I just have to clarify in relation to each of those categories what the definition of owner is in Queensland legislation.

Senator FURNER—That being the case, what would be the effects on traditional owners of the new bill requiring that consent of all owners of Aboriginal land as defined in the bill?

Ms Jones—It is not completely clear on the face of the legislation what the effect would be. The issue is how the consent of opponents of land and native title or traditional owners would be obtained and, if there were a difference of view between those two groups, how that difference would be reconciled. I return to the original point we made in relation to the bill, which is that it is our view that the Wild Rivers Act does not affect the exercise and enjoyment of native title rights and interests because it quite explicitly excludes such an impact on native title rights.

Senator FURNER—In respect of the six-month period before current declarations will lapse without consent, how would that operate?

Ms Jones—We have looked at that provision to try to understand how it will operate. Again, it is not completely clear what the impact of that will be in terms of consent.

Senator FURNER—In its nature of being environmental protection legislation does the wild rivers legislation differ from other environmental protection legislation in Queensland?

Ms Jones—I have not done an analysis of the impact of wild rivers compared with all the other types of environmental regulation in Queensland or outside of Queensland.

Senator FURNER—Is that possible?

Ms Jones—I would need to take that question on notice, but I think it probably would be a matter for Queensland government officials to provide authoritative advice to this committee.

Senator FURNER—Do you think the bill is about rights or about development around the cape, or is it a combination of both?

Ms Jones—In terms of the wild rivers bill before the Senate at the moment?

Senator FURNER—That is correct.

Ms Jones—I cannot really comment on that one way or the other.

CHAIR—Do you have a view, Mr Tongue?

Mr Tongue—It is certainly the case that there is at the core of the matter an attempt to reconcile, if you like, Indigenous aspiration and interest in land and economic development with protection of the environment. Certainly the thrust of the IDC's submission to the House of Representatives inquiry, which we have provided to this committee, is that there is an awful lot of input to economic development in remote areas, particularly in the case of the cape. In trying to provide a platform for Indigenous aspiration in the cape we point to things such as the need for infrastructure investment and governance reform—there is a whole range of things. Whilst the notion of the bill is one potential further input into economic development, it is certainly not the only key input into economic development in the cape. There are a lot of inputs necessary to drive growth in the cape.

Senator BARNETT—Through you, Chair, Senator Furner can of course review the second reading speech in terms of the objective of the bill before the Senate.

CHAIR—But there is no explanatory memorandum, so it makes it very hard for us to make an assessment about this legislation.

Senator FURNER—I asked the Queensland government about economic growth in the cape, and in fact their submission provided ABS statistics on growth between 2006 and 2010 showing an actual increase of 546 jobs in the area. Are there any impediments that you foresee that would prevent economic development, for either Indigenous or non-Indigenous people in the cape, as a result of the wild rivers Queensland legislation?

Mr Tongue—We are certainly aware of one major mining project that has been put into abeyance. We think that was because of the wild rivers legislation. I note from some of the submissions from some of the interests in the cape that also point to the possibility of other projects that may not have gone ahead. That is on the one

hand. On the other hand, if you look at evidence from, say, the sort of economic development opportunities that have emerged from World Heritage listing in some parts of the country, a case can be made that protection of the natural environment creates other economic development opportunities. So there is certainly some evidence to suggest some lost opportunity—

Senator BARNETT—Which one are you referring to?

Mr Tongue—I think it is called Cape Alumina.

Senator FURNER—That was an exploration, though, wasn't it? It was not a case of their actually having been granted a mining lease?

Mr Tongue—No. I do not think they have been granted a final development approval but I think they certainly were moving down the path.

Senator FURNER—So anything could have been possible. As I understand from my research on Cape Alumina, the grade of bauxite there is second grade compared with what is around Weipa township itself.

Mr Tongue—I could not comment. Certainly in the submission we have provided some assessments by Geoscience Australia on various mineralisation and other opportunities in the cape. The evidence suggests certainly the possibility of some lost opportunity but, on the other hand, there is emerging opportunity associated with the natural environment.

Senator FURNER—There have to be other barriers associated with development in the cape for Indigenous people. Are you able to identify those?

Mr Tongue—Certainly. There are around 10,000 Aboriginal and Torres Strait Islander people in the cape area. There have been considerable efforts led by Indigenous leaders in the cape to address issues that might fall broadly under the heading of human capital formation—that is, skills, development, education and so on. Another area is infrastructure. Some of the work that various Queensland government and federal agencies have done has pointed to the need for infrastructure development. I am not talking here about major highways or anything like that; I am talking about work to support the emergence of the tourism industry, to support the emergence of small business and so on. I think there are some governance issues. I was surprised by the level of activity across federal government agencies in the cape, and I think there is some opportunity for us as a group of agencies to get a better direction around some of those opportunities. The same might be said of our relationship with state government counterparts in the cape. So it is the usual story for remote areas of infrastructure, human capital, governance all needing to come together to provide a platform for growth.

Senator FURNER—There has been a lot of commentary around the view that the cape has been locked up as a result of wild rivers; has that been the case?

Mr Tongue—You are asking me for an opinion.

Senator FURNER—Okay, let me rephrase it. There have been statements from the opposition and even from mayors in the cape identifying that it has been locked up, going back to development of the cape. In your statistics and examination of what has resulted in economic development, is that the case?

Mr Tongue—It depends on what class of economic development you are talking about. If you are talking about carbon farming or market gardens or any of the topical things, there is a balance of land still available, but there is also land that is no longer available. If you are talking about mining development, I would refer you to the Geoscience work and step back a bit from that because the answer is that we do not know until projects get further proved up. If you are talking about tourism, perhaps other opportunities emerge. So I think it is a very complex picture.

We have provided in our submissions some assessments that have been made—and I think perhaps the Queenslanders have, too—about how much is locked up and how much is still available. I would also point the committee to the CSIRO assessment completed for the Northern Australia Land and Water Taskforce. That was a very significant exercise, looking at landform capability across the north of Australia. It made some relevant findings on development potentials, for cattle, farming of various sorts and so on, across remote areas including the cape.

CHAIR—Senator Xenophon, are you on the line?

Senator XENOPHON—Yes, I am. There was a gremlin in the system, Chair; I do not know what happened earlier but I eventually reconnected. Could I ask the witnesses: there is not an issue, though, is there,

that, constitutionally, the Commonwealth could override the Queensland legislation in the way proposed by the legislation? I think you are raising issues as to the processes and the practicalities of doing so.

Ms Jones—In terms of any federal bill, obviously it would override state legislation to the effect of any inconsistency. But, beyond that, I cannot provide any more detailed constitutional advice.

Senator XENOPHON—No, but other than that: it would invoke whatever—section 109, I think, relates to inconsistencies. But you have concerns about the mechanics of it or its practicalities in terms of how the consent mechanism would work. That is one of your principal concerns.

Ms Jones—I think that is correct. There is just a concern in terms of some of the definitions and some of the interests and how they would be reconciled in practice. And, in relation to a couple of key issues around how agreement will be obtained, it is not clear on the face of the legislation; I think it is left to the regulations as to how that will be set out. That is a fairly significant aspect as to how the regime will operate in practice.

Senator XENOPHON—Almost paradoxically, though, the coalition would trust the government to draft and implement the regulations, which I guess would affect the application of the act, wouldn't it?

Ms Jones—It would affect the application of the act. It is just difficult to comment without having a better understanding of how those regulations might be drafted and the impact that they would have.

Senator XENOPHON—But, in a sense, the precise application of what is proposed in this bill would be circumscribed by the regulations, which would be an act of the government of the day.

Ms Jones—I think that is correct in practice, yes.

Senator XENOPHON—Yes. Thank you, Chair; I do not have any other questions.

Senator BARNETT—Just on that issue of Senator Xenophon's: just to put it on the record, there is no issue regarding the constitutionality of the bill before the Senate—is that correct, Ms Jones?

Ms Jones—I am not providing constitutional legal advice on the bill.

Senator BARNETT—No, of course not. But, in terms of your understanding that it is a bill before the Senate and, if passed, it would be legal, are you able to respond to that question?

Ms Jones—In terms of the phrasing of the question, I would just refer back to my general comment before: that, obviously, as to a bill of the federal parliament, if passed, to the extent that there is any inconsistency with state legislation then the Commonwealth legislation would prevail.

Senator BARNETT—Under section 109 of the Constitution, yes. We are familiar with that section. It has just been raised as an issue. I do not think there has been any doubt in the past inquiries that we have had. If you had any doubt, I would be happy for you to take it on notice and alert the committee to any view that might be contrary to the fact that it would not be a legally and constitutionally valid bill. That is really what I am saying. So if you have views to the contrary, please let us know as a committee. That is all, Chair. Thank you.

CHAIR—Thank you for your quite extensive submission. The views of the departments are summarised in the 3¼ page letter dated 15 April that you sent to us as a committee. Thank you very much for your time. I thank everyone who provided evidence to our inquiry.

Committee adjourned at 4.50 pm